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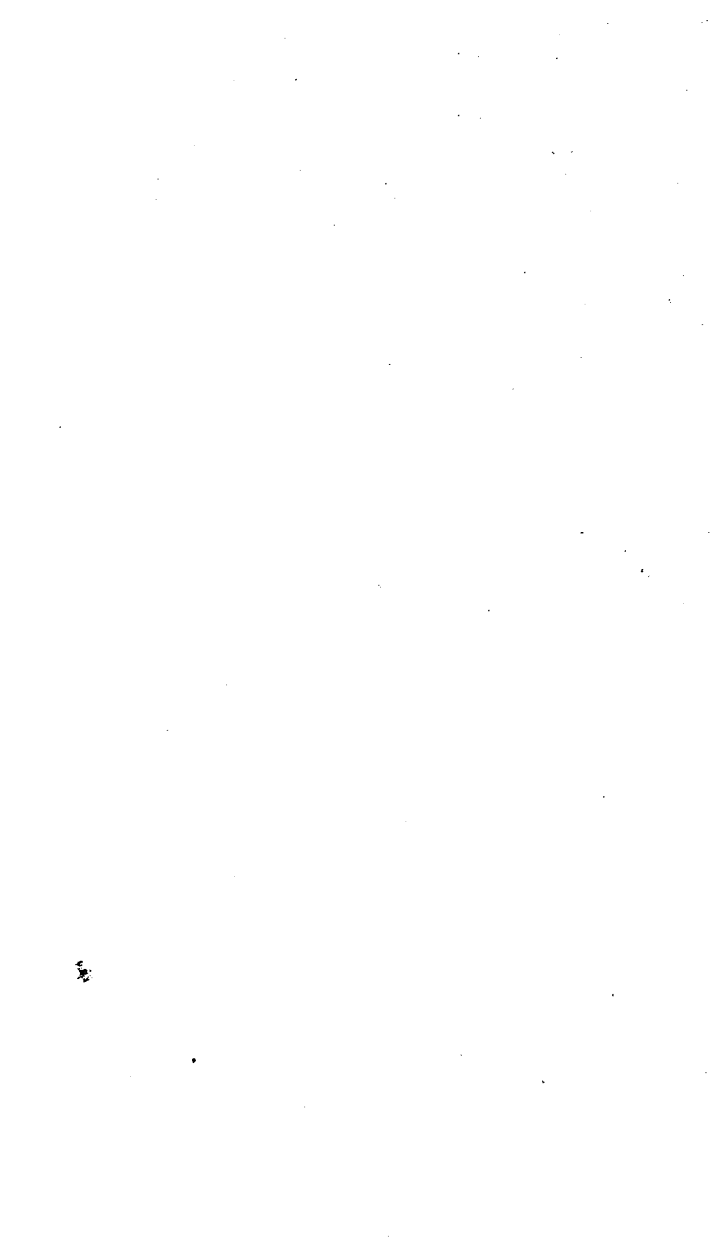
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# **THE STATE AND THE CHURCH**

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THE BALDWIN LECTURES FOR 1898

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# The State and the Church

BY

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NEW YORK  
THOMAS WHITTAKER  
2 AND 3 BIBLE HOUSE

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“4. To organize a society, to be composed of the students in all classes and departments of the University who may be members of or attached to the Protestant Episcopal Church, of which

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## LECTURE I.

### THE BASIS OF THE STATE.

IT is patent to all who read, and who reflect, in these days of social unrest, that men have outgrown their old ideas of state and church, the two great organizations of society, and that these institutions must be reëxamined carefully and critically, in order to see what errors have been made in the past, and to lay again, for the future, right foundations for the proper conception of the one and the other. As regards the state, the fact is that men have studied it for the most part with prejudices born of the circumstances of their lives. I have no time to lay before you the stories of the lives of all the great jurists and philosophers, but let us consider three of them, that of Hobbes, that of Rousseau, that of our own countryman, Dr. Mulford.<sup>1</sup>

Hobbes was born in the year 1588 and did not write his first original work, "*Elementa Philosophica de Cive*," until 1642, and it was not until 1651 that he published the best known of his

<sup>1</sup> The lives of these men are taken for examples because they are the most familiar to the American student.

writings, "Leviathan." In this work he contends, as he had done in his previous publications, in favor of a pure monarchy, and comes to the conclusion that the "rights," or just powers of the sovereign over the lives and fortunes of his subjects are unlimited, and that there is a corresponding duty on the part of the subject to obey. Hobbes was, as we know, the son of a clergyman and was educated at Oxford. At the age of twenty years he entered the household of Lord Hardwicke, subsequently the Earl of Devonshire, and with a few breaks thereafter, he continued to be connected with the Devonshire family until the day of his death. When we reflect that Charles I. began to reign in the year 1625, that the Long Parliament sat from 1640 to 1653, and that the Commonwealth prevailed from 1649 to 1660, we can understand why Hobbes exalted so much the sovereign power, and contended for an absolute monarchy.

It is curious to observe that to reach this conclusion Hobbes was compelled to assume the existence of an imaginary contract between the individual members of the state, not with the sovereign power, but with each other, by which an unlimited right or power was conferred upon the sovereign; and that Rousseau should have founded his peculiar views of the state and government upon the identical basis of contract.

But Rousseau, we know, drew entirely different deductions from the social contract from those of Hobbes. In his mind the contract that was originally entered into between all the citizens of a state was a contract by which every man should be equal, and no man should have the lordship, or sovereignty, over any other. The opening words of the first chapter of his famous book read: "Man is born free, and in all places he is in chains." And in the chapter on the Social Agreement, further on, he says: "Each one gives himself entirely; the condition is the same for all, and the condition being the same for all, no one has any interest to render it onerous for others."<sup>1</sup> His "*Contrat Social*" was published in the year 1762. But this is the one point that I desire to make. Rousseau's ideas were the result of his prejudices. He was born in the year 1712, a free citizen of the free city of Geneva. And he lived, for the most part, in down-trodden France, in which country he died in the year 1778. He lived in the times immediately preceding the French Revolution, and he imbibed the ideas that were then prevalent, and gave them forth to the world.

It is evident, that, fantastic as were many of Rousseau's ideas, the deductions that he drew were just as logical as those of Hobbes, perhaps

<sup>1</sup> (Chap. vi.)



more so; for Hobbes, besides assuming that the individual members of the state entered into an imaginary contract by which government was established, supposed further that the contract was unconditional, and that it was irrevocable. Whereas, Rousseau, with, I think clearer insight into the nature of man, avers that, if the social agreement became violated, each one enters into his full rights, and takes up again his natural liberty. But the fault is not so much with the deductions of each philosopher, as it is with his premises. As a matter of fact, there was no war of all against all, such as Hobbes declared to have been the original status of mankind, by which they were induced to make a contract that one should have absolute right or sovereignty over the rest, for their protection; nor was there originally such a state of life as that which Rousseau imagined, a state of nature, wherein men lived free and idyllic lives. The history of the origin of the state and government tells us another thing, and so does the causal origin, but we will study these later on. Let us first examine the conception of Dr. Mulford, which, by the way, was probably derived from the late Mr. Gladstone's book, "The State in its Relations with the Church."<sup>1</sup>

In chapter four of "The Nation," Dr. Mulford

<sup>1</sup> (*Vide*, Vol. I., Chap. ii., Part I., 68-75.)

says: "The evidence of the origin of the nation is in its necessary nature.—The nation is an organic unity; it is not an artificial fabric nor an abstract system, but it has a life which is definite and disparate, and has a development; therefore it has not its origin in the individual nor the collective will of man, but must proceed from a power which can determine the origin of organic being;" and again he says: "The evidence of the origin of the nation is also in its being as a moral person. There is and can be for personality, as it transcends physical nature, only a divine origin, and its realization is in a divine relation. The subsistence of the human personality is in the divine personality, and its realization is in its divine relations, and as with the individual personality, so also with the moral personality of the nation,—its origin and its consistence can be only in God."<sup>1</sup> In other words, Dr. Mulford considers the nation to be an organism that has life in itself, and will and moral determination; that it is, in one word, a moral person created by God.

In the first place, we have to remark that Dr. Mulford uses the word "nation" instead of the term "state" and that therefore he excludes from his idea of the state not only the village and the tribe, but also the city, which, with the

<sup>1</sup> (p. 55.)

Greeks and Romans, was the only form of the state existing. But obviously this conception of the state is too restricted. For though in modern times when we use the term "state" we generally have in view the modern, European, national state, yet we habitually apply the term more extensively. We understand by the state any and all autonomous human societies in which men may live.

In the second place, we must remark that Dr. Mulford begs the whole question. There is absolutely nothing upon which to base the assertion that God created the state and endowed it with body and soul, and conscience, and other like organs. It is a beautiful metaphor to say that the state is a "moral organism," a "moral personality," but these expressions mean nothing more than that the state is a corporation, having the attributes of a corporation, being not an actual, but a fictitious person.

Dr. Mulford was born in the year 1833, and "The Nation" was published in the year 1870. It is evident that he was at work upon his book during the long years of the War of the Rebellion, and probably during the longer years of debate that preceded the war. The questions, the burning questions of his day were: Were the people of the United States a mere aggregation of individuals, to be separated at the desire of

any number of individuals? Was the union a union of a number of states to be divided at the will of any state? Or, Were the people a compacted and articulated body, the union a single sovereign whole? Those who looked upon the people as being a mere aggregation of individuals, and the union as being a number of distinct and independent states, took a low view of the corporate life of the nation, if they had any view of it at all. Those who looked upon the people as living in a union of states that was, indeed and in truth, one distinct and sovereign power, grew to the conception of the nation as a high ideal of righteous living; and such an one was Dr. Mulford. And these last gave to the nation all the attributes of personality, conscience, will, moral sense and unity of parts in one whole. The ideal was pleasing to the men of the past generation, it is pleasing to us still, but it is only an ideal.

But what is the state, and what is the basis of it? Mr. George H. Smith, in his admirable prize essay, "The Theory of the State"<sup>1</sup> considers that all human autonomous societies, with the exception of the single family, are states, and he founds his views on Aristotle's principle, which, as we know, is now universally accepted as the fundamental fact of political science, that, "Man is a

<sup>1</sup> (Reprinted Dec. 14th, 1895, from Proceedings of the American Philos. Society, Vol. XXXIV.)

political animal, and therefore he must necessarily always be a citizen, or member of a state.”<sup>1</sup> In other words, it is contrary to man’s nature, as universally observed, for him to exist in a stateless condition. If this deduction be true, then when there was but one family on the face of the earth, there must have been a state, and this Mr. Smith seems to admit when he says: “Even with regard to the family in its simplest form, as consisting merely of man and woman, this, also, if we could conceive of it existing independently—as, for instance, in the case of Adam and Eve in Paradise—might, with propriety, be called a State, or, at least, a State in embryo.”<sup>2</sup> A family, then, can be a state, if it can exist independently of all the other families in the world, as, for example, the family of Abraham, in the land of Canaan. In the family the state took its rise. By the family it is conditioned. For the family it should exist. And this has been the cause of many of the erroneous deductions that have been made by writers upon the state and government. They have regarded the state as a kind, some kind, of aggregation of men, and have sought for the germ and reason of its development in the nature of the individual, or, if they have looked upon the state as made up of families, they have neglected to think of

<sup>1</sup>(p. 55.)<sup>2</sup>(*Id.*)

the state as the development of the family, and the family, therefore, as the pattern of the state and as furnishing the type for its government. The great principle of Aristotle himself that "the State is a natural institution, and that Man is naturally a political animal,"<sup>1</sup> has conduced to this very thing, that men have regarded man as individual men, and not man as made up of men and women and children, as man therefore in family relations. And yet, it is evident that they who have so regarded this principle of Aristotle have never read or understood his argument; for he shows conclusively that his reason why "man is naturally a political animal" is that he naturally must combine the male and the female "in order to the procreation of children, nor is there anything deliberate or arbitrary in their so doing; on the contrary, the desire of leaving an offspring like oneself is natural to man as to the whole animal and vegetable word."<sup>2</sup>

And then he goes on to show the genesis of the state: "The associations of male and female, master and slave, constitute the primary form of household, and Hesiod was right when he wrote,

'Get thee  
First house and wife and ox to plow withal,'

<sup>1</sup> (Politics, Book I., Chap. ii., p. 5, Welldon's Translation.)

<sup>2</sup> (*Id.* p. 2.)

for an ox is to the poor what a servant is to the rich. Thus the association naturally formed for the supply of everyday wants is a household; its members, according to Charondas, are 'those who eat of the same store,' or, according to the Cretan Epimenides, 'those who sit around the same hearth.' Again, the simplest association of several households for something more than ephemeral purposes is a village. It seems that the village in its most natural form is derived from the household, including all the children of certain parents and the children's children, or, as the phrase sometimes is, 'all who are suckled upon the same milk.' . . . Lastly, the association composed of several villages in its complete form is the State, in which the goal of full independence may be said to be first attained. For as the State was formed to make life possible, so it exists to make life good. Consequently if it be allowed that the simple associations, *i. e. the household and the village*, have a natural existence, so has the State in all cases; for in the State they attain complete development, and Nature implies complete development, as the nature of anything, *e. g.* of a man, a house, or a horse, may be defined to be its condition when the process of production is complete."<sup>1</sup>

Man is naturally, then, a political animal be-

<sup>1</sup> (Id. pp. 3, 4. 5.)

cause he is a member of a family, and for no other reason. His political attributes disappear when he becomes an outcast, like Cain; and this is the causal origin of the state. Hence, we must agree with Burke, that, "The state ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest and to be dissolved by the fancy of the parties. It is to be looked on with other reverence; because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science; a partnership in all art; a partnership in every virtue and in all perfection."<sup>1</sup>

And with this conclusion the account we have of the origin of the state in history agrees. When we regard modern states, we are generally able to trace back the history of each to its beginning, but when we look at the ancient states, we see that their origins are obscured by many legends and the mists of mythology. All, therefore, that we can know of the rise and growth of the primitive state, with the exception of a few historical facts, is the inferences that we

<sup>1</sup> (Reflections on the Revolution in France, second Ed., J. Dodsley, Pub., p. 143.)



draw from the nature of man; but from this, if we reason rightly, the general course of the genesis and development of the state may be learned. In the beginning man is found in families, and out of the family society must grow, as from a germ. When society becomes in any way organized, we call its organization a state, whether it be the village, the clan, the tribe, the city or the nation. And this is the order of the development of man in political relations as uniformly observed. Other causes may concur in the growth of the state, the chief of which is war, conquest and colonization, but without these the course of development, if it had not been arrested, would invariably have taken place in a state of Aryan and Semitic people as stated above.

For this statement of the manner of growth and development of the family into the state we have many authorities which might well be cited, but I will quote only the words of Sir Henry Maine, the founder and chief exponent of the modern school of historical jurisprudence. "Archaic law," says Sir Henry, . . . "is full, in all its provinces, of the clearest indications that society in primitive times was not what it is assumed to be at present, a collection of *individuals*. In fact, and in view of the men who composed it, it was an *aggregation of families*. The contrast may

be most forcibly expressed by saying that the *unit* of an ancient society was the Family, of a modern society the Individual.”<sup>1</sup> I do not care to discuss at present what would be the result in our modern state if we should regard society as composed of an aggregation of families. I will do this later on. My simple desire now is to show that the family is the basis of the state and the origin of it, and that the state cannot, if true to its basis and origin, depart from the family form and idea.

From what has been said of the origin, both of the causal and the historical origin, of the state, it is evident that it does not need the refined hypothesis of a social contract, nor, indeed, of any direct ordination from heaven to justify its existence, but it is to be regarded as a phenomenon naturally existing in the same way as man himself exists. The state is a part of man's humanity. Hence it is absurd to speak of the “state of nature” as different from the social state, for the social state is the natural state of man, and the “state of nature” is but another name for it. The term “state of nature” is very commonly used to denote what may be properly called the anarchic state, that is, society without government. But in this sense it denotes a purely fictitious idea, an idea which has probably never

<sup>1</sup> (Ancient Law, Chap. v., p. 121.)

existed at all, and which can only exist in the perfected democracy of God, for it is evident that the nature of man is such as to impel him irresistibly to live in society, and that in order for him to live a social life, government of some kind is essential. When human nature shall be perfected, then, and not till then, will men be able to live without any government except the will of God as revealed in the Incarnation.

Hence, it is wrong to lay too great stress upon the outward form of government. The chief thing in government is that there shall be a head or a source of authority, who will understand that his (or their) power is that of a father, and that it is his (or their) duty to secure the end for which the state exists, namely, the welfare and happiness of all its members. And this is really the prevalent idea of our age; the German Emperor, personally, the Queen of Great Britain, vicariously, by her ministers; the President of the United States, associated with congress, perceive and perceive very clearly that it is not only necessary for them to see that the laws be carried out, and made effective, but to care for the social well-being of all their subjects and fellow-citizens from the least unto the greatest. And this is the reason why the idea of the state of the socialists is so weak they desire to erect a paternal government without a head. Only a strongly consti-

tuted source of authority could see to it that their principles, when made laws, should be carried into effect; and such an authority they do not want.

We see, then, the great influence of the family as the basis of the state in its causal and historical origin; let us see how important it is as the preserver of its life. In the family are contained all the elements of the state, order, authority, love, care, respect, obedience, and that mutual regard for and consideration of the rights and duties of others, that make us to feel and to know that the family is divinely constituted. The germs of all social obligations and duties are found in it. When a man comes into the world, it is a long time before he understands that he is an American or an Englishman or a German. It is a long time before he understands that he lives under the government of a republic, or of a constitutional monarchy, or of a benevolent war-lord; but he understands almost with the first words that he learns to use, that he has a father and a mother, and perhaps brothers and sisters, and he learns, too, before long, in properly constituted families, that order and authority belong to his father, and that love and care belong to his mother, and that his brothers and sisters have equal rights to all the good things of life with himself. And again he learns that all the

members of the family must conduct themselves, each to the other, with due regard and consideration of the fact that each one is a member also of a community, of which the head is God, who is the Father of all living souls. It is easy to see how, in such a family, respect and obedience will arise in the hearts of all the children. There are some exceptions to the rule that all the members of a family have equal rights to the good things of life, because of the desire to keep up the family position and tradition, but these exceptions never quite destroy the feeling of equality that exists between the children of the same father and mother.

A recent writer, Professor Drummond<sup>1</sup> has said that the one motive of organic nature was to make mothers, and he has laid the greatest stress upon the place of motherhood in the family life. Far be it from me to derogate, or seem to derogate, in any way from the position of woman and her wonderful influence upon the life of her offspring; but I cannot but deplore the fact that Professor Drummond, as well as many others who have consciously or unconsciously followed him, have in their exaltation of motherhood lost sight of the true significance of fatherhood in the life of the family and of the state. The fact of motherhood, wonderful as it is, does not suffice to

<sup>1</sup> (*Ascent of Man*, Chap. viii., p. 267.)

teach the world of men the things that belong to the family and the social life. Nor will the sweet feminine virtues of patience, sympathy and loving-kindness be sufficient to meet the requirements of the state and government. There must be first of all authority and obedience. Authority and obedience are evolved out of the fact of fatherhood. Reason the process of evolution back as far as you will, the child, who knows nothing of the process of birth, is just as soon impressed by the fatherhood of the man as by the motherhood of the woman. We are none of us grateful for the care and protection that either of our parents has bestowed upon us, until the advancing years have taught us what their care and protection mean and have meant.

If the basis of the state is the family, the basis of the family is authority, for without some authority, some headship, children would not be born into a family but into a horde or group. Indeed, there is no reason to believe that the family would ever have become instituted without authority. Headship or authority a man must have if he is to protect his wife and children, and obedience is the price of protection. It may have been that the earliest and simplest form of the human family was "a pairing arrangement of relatively short duration,"<sup>1</sup> and

<sup>1</sup> (Giddings, *Principles of Sociology*, Chap. iii., p. 155.)

that the oldest ethnical organization was the metronymic group, that is, a group in which all relationships are traced through mothers; and yet we must observe that out of such a group a state never took its rise and developed. The patronymic family must first have been established, or at least the headship and autocracy of the father acknowledged. We must take the world of men as we see them, and as history shows them. "Everywhere," says Westermarck, "we find the tribes or clans composed of several families, the members of each family being more closely connected with one another than with the rest of the tribe. The family, consisting of the parents, children, and often also of their next descendants, is a universal institution among existing peoples. And it seems extremely probable that, among our earliest human ancestors, the family formed, if not the society itself, at least the nucleus of it."<sup>1</sup> And again, he says, "I do not, of course, deny that the tie which bound the children to the mother was much more intimate and more lasting than that which bound them to the father. But it seems to me that the only result to which a critical investigation of facts can lead us is, that in all probability there has been no stage of human development where marriage has not existed, and that the father has

<sup>1</sup> (History of Human Marriage, Chap. iii., p. 41.)

always been, as a rule, the protector of his family.”<sup>1</sup>

But we must not think of the family of ancient times, as shown to us in archaic law, as being exactly that which the family is to-day. The family in ancient times was like, and yet it was in many ways unlike, the family of to-day. “In order to reach the ancient conception, we must give to our modern ideas an important extension and an important limitation. We must look on the family as constantly enlarged by the absorption of strangers within its circle, and we must try to regard the fiction of adoption as so closely simulating the reality of kinship, that neither law nor opinion makes the slightest difference between the real and an adoptive connection. On the other hand, the persons theoretically amalgamated into a family by their common descent are practically held together by common obedience to their highest living ascendant, the father, grandfather, or great-grandfather. The patriarchal authority of a chieftain is as necessary an ingredient in the notion of the family group as the fact (or assumed fact) of its having sprung from his loins; and hence we must understand that if there be any persons who, however truly included in the brotherhood by virtue of their blood-relationship, have nevertheless *de*

<sup>1</sup> (*Id.* p. 50.)



*facto* withdrawn themselves from the empire of its ruler, they are always, in the beginnings of law, considered as lost to the family. It is this patriarchal aggregate—the modern family thus cut down on one side and extended on the other—which meets us on the threshold of primitive jurisprudence. Older probably than the State, the Tribe and the House, it left traces of itself on private law long after the House and the Tribe had been forgotten, and long after consanguinity had ceased to be associated with the composition of States.”<sup>1</sup> It is in the family, then, that there is first found authority, and not only authority but obedience, the two great pillars of government and the state. And the family as looked at from the standpoint of ancient jurisprudence, or historically, is not the natural family, but the natural family and something besides, the natural family with the principles of adoption and exclusion added. And herein we have outlined the distinction and yet practical agreement in a state of the natural born and naturalized citizen.

In his lectures on “Social Morality”<sup>2</sup> Maurice has shown us the great place that authority has in the life of the family and state. His words

<sup>1</sup> Maine, *Ancient Law*, Chap. v., p. 128, *et seq.*)

<sup>2</sup> (Lecture II., p. 22.)

are so clear and his reasoning so cogent that it seems wiser for me to quote them than to make a paraphrase of his ideas; and yet the things that I desire to bring before you are so mixed with others that are not pertinent, that I will have to do so. At the basis of all relationship is the fact that we are sons. I cannot be the centre of the circle in which I find myself, be it as small as it may; I must refer myself to another, there is a root behind me. There is an author of my existence; and herein lies the great significance of the fact. As soon as I recognize an author of my being, I recognize an authority over me. It will not do to say that a child knows anything about the meaning of the terms "author" and "authority," but it understands that there is a tie which it must observe, which binds it and another together. In the very fact of fatherhood authority is involved, and this all men learn in the filial relation. It is strange, but experience teaches us that children do not learn what authority means from their mothers; they learn what love means from them, but authority they refer to their fathers. Maurice goes on to show the distinction between authority and dominion, and this distinction, it seems to me, we ought always to have in mind, for it is a great and useful one. If it had been understood and observed in the past, the course of history would

have been far different from what it has been, and many of the cruel internecine wars that history records would have been avoided. Dominion is the power that men possess over things (it may be over men as well) which has in it nothing of an ethical or moral obligation. Authority is always bound up with ethical and moral considerations. It has in it the conception of reciprocal relations and duties. Authority carries with it the idea of author. The thing or person over which authority is had has relation to the author, and the author to it or him. Where there is dominion, there is subjection; where there is authority, there is obedience. Authority and obedience are the distinctive principles of the family life, and these are the fundamental principles of society.

What right has a man to govern his family? The right of author. What right have men to govern in society? The same right of author, if not the actual, the delegated rights of the many; for no man ever had the right of dominion over his brothers. Men have usurped and acquired powers of dominion over others, but they have never had the *right* of dominion. God's own right is the right of author over the children whom He calls His sons. He has limited Himself to such right when He showed men that He was their Father. No men, no set of men, can

have rights superior to those of the Creator. It is to be observed that Hobbes<sup>1</sup> asserts that men have the right of dominion over their children. "Dominion," he says, "is acquired two ways; by generation and by conquest. The right of dominion by generation is that which the parent hath over his children and is called 'paternal.'" With the change of view in regard to the right of sovereigns has come the change in regard to the right of parents, and *vice versa*. On the other hand, everybody owes the duty of obedience where there is authority, for obedience, as distinct from subjection, is implied in the very fact of authority. But obedience, like authority, has in it a moral and not a physical obligation. It is when the moral obligation is lost sight of, that authority becomes dominion, and obedience subjection. It is true that this has often occurred even in families, but then the life of that family was not the normal life of man, rather was it the life of brutes. The life of man can only exist where there is love, the life of brutes can exist where there is only fear. Now, it is the province of the woman, of the mother, to awaken love. She makes the son to see that the father's authority is not dominion, but that it is based on good will and right intent, and she makes the father to understand

<sup>1</sup> (Leviathan, Chap. xx., p. 96, Morley's Universal Library.)

that the son's obedience is not subjection, but that it is based on reverence and proper respect. It is strange that the place of woman is so well understood in the family, but that it has rarely been understood in the state. In the modern state many women desire to have the place of authority that men ought to have, and thus they miss their real and essential vocation.

The family, then, is the basis of the state, and out of it the state has grown. In it the state finds its type and model. In it it should find its effective power. How necessary, then, for the preservation of the life of the state are the life and stability of the family! The bond of the family is marriage; the union usually of one man with one woman and the children that spring from that union. It is true that in some countries polygynous and polyandrous marriages have, and do, prevail; but states wherein polygamy exists are weak. Polyandry is an institution of low and barbarous peoples, such as can scarcely be said to have founded states. Government by authority and submission by obedience cannot be postulated of polygamous states. The rule of the Sultans of Islam has been, and is, only dominion, the relation of their subjects to them has been, and is, only one of subjection. How important, then, is monogamy,

that is, the marriage of one man with one woman, and that for life.<sup>1</sup>

And yet, as it seems during the last years of this century, more has been done to destroy the institution of marriage in Christendom than in any of the ages of the world since Christ came on earth and reëstablished it. The trouble in regard to marriage has arisen out of the modern conception that it is merely a civil contract with which the individuals only are concerned; though it is admitted that the state has a right of oversight for its own purposes. This was certainly the view that was prevalent in the Roman world at the time of the advent of our Lord; but it had not always been so. Marriages earlier in Greece and Rome had generally been contracted with religious ceremonies, and for many years divorces were unknown at Rome. Under the later Roman law marriage became a mere contract and a man could put away his wife and a woman could put away her husband

<sup>1</sup> "As a general rule, human marriage is not necessarily contracted for life, and among most uncivilized and many advanced peoples a man may divorce his wife whenever he likes. Nevertheless, divorce is an exception among a great many races, even among races of the lowest type; and numerous nations consider, or have considered, marriage a union which must not be dissolved by the husband, except for certain reasons stipulated by custom or law." (History of Human Marriage, Chap. xxiv., p. 549.)

for any cause, so that Seneca speaks in one of his writings of "daily divorces," and, in another well-known passage of his works, of "illustrious and noble women who reckoned the number of their years, not by the consuls, but by their husbands."<sup>1</sup> "*Illustres quædam ac nobiles fæminæ non consulum numero, sed maritorum annos suos computant.*") And Tertullian, denouncing the degeneracy of the Roman matrons of his day, says: "Where is that happiness of married life ever so desirable which distinguished our earlier manners, and as the result of which for about six hundred years there was not among us a single divorce? Now, women have every member of the body heavy laden with gold; wine-bibbing is so common among them, that the kiss [of salutation to their relatives] is never offered with their will; and as for divorce, they long for it as though it were the natural consequence of marriage."<sup>2</sup>

And divorces seem to have grown very common in the later Jewish commonwealth, as common, indeed, as in the Roman.<sup>3</sup> In the Jewish law, however, there was a protection to the woman that the Roman law did not provide. The man who put away his wife had to

<sup>1</sup> (*De Benef. Lib. III., Cap. XVI.*)

<sup>2</sup> (*Apol Chap. vi.*)

<sup>3</sup> (*Life of Flavius Josephus, Sec. 76.*)

give her a bill of divorcement, stating the reason why he put her away. But Christ said: "It was said also, Whosoever shall put away his wife, let him give her a writing of divorcement: but I say unto you, that every one that putteth away his wife, saving for the cause of fornication, maketh her an adulteress: and whosoever shall marry her when she is put away, committeth adultery."<sup>1</sup> And again he said: "Have ye not read, that He which made *them* from the beginning made them male and female, and said, For this cause shall a man leave his father and mother, and shall cleave to his wife; and the twain shall become one flesh? So that they are no more twain, but one flesh. What therefore God hath joined together, let no man put asunder."<sup>2</sup> Herein we see an entirely different conception of marriage from that which prevailed in the world before Christ's advent. Not that marriage had not, previous to this announcement by Christ, been looked upon as a thing that had in it some religious character. The Roman patricians at their nuptials made a sacrifice to the gods, and the contracting couples were united with prayer. It is probable also that a consecration took place on the day of the betrothal or wedding among the Hebrews; but never, before Christ taught, had men and women been looked upon as con-

<sup>1</sup> (St. Matt. v. 31, 32, R. V.)

<sup>2</sup> (St. Matt. xix. 4-7.)



stituting one flesh because of a religious sanction. In the early Roman law of marriage, the wife became not one with, and thus equal, with the man, but she came under his power,—*patria potestas*—as a daughter. In the oldest Roman law a woman was considered to be under perpetual tutelage, and though released from her father's authority by his decease, she continued to be subject to her nearest male relations, or to her father's nominees as her guardians. In India this system survives in absolute completeness to this day, and by its operation a Hindu woman frequently becomes the ward of her own sons.

It was the making of woman one flesh with man, and the conception of what this thing really meant, that raised her to the high place she has ever since held in the history of the world, and made monogamy the only form of marriage known to Christendom. Indeed, so strict did the early Christians become in their ideas concerning marriage that monogamy with them was not what it had been in the Roman law and what it is with us to-day, the union of one man with one woman for life; rather was it regarded as the union of one man with one woman forever. A second marriage after baptism disqualified a man for being ordained;<sup>1</sup> and

<sup>1</sup> (Ap. Can. XVII.)

although persons who had been twice married were permitted by indulgence to communicate after a short time spent in prayer and fasting<sup>1</sup> a presbyter was forbidden to be a guest at the nuptials of persons contracting second marriages<sup>2</sup> "for if," (as it said) "the bigamist is worthy of penance, what shall the presbyter be, who, on account of the feast, sanctions the marriage?" It is true that woman has been under many and severe legal disabilities in the so-called Christian states, but this has been by reason of the survival of old heathen manners, and a too strict following by canonists of the early Roman law.

It is to be remembered that at the time of the later Republic and early Empire, the ancient forms of marriage having fallen into disuse, a fashion of marriage came in, founded on an old form of marriage between plebeians, that was nothing more than a civil contract, by which the wife was "deposited" with her husband, the rights of her family being retained. And, as these rights had been reduced to a minimum by the decrees of the Prætors, the woman became absolutely free to do as she chose. Hence arose the many marriages of the same woman with many men, and the ever-recurring divorces that disgraced and demoralized society in the days of

<sup>1</sup> (Can. Laod. I.)

<sup>2</sup> (Can. Neo.-Caes. VII.)

the early Cæsars. It was against these marriages and their concurrent divorces that the church resolutely set its face. At an early period of the church's history no marriage was said to be Christian without the blessing of the priest. In the middle ages a religious ceremony was generally made obligatory by law. With us to-day, as we know, owing to the "Married Woman's Acts," a woman is not only absolutely free in the disposal of herself, but she retains all her rights to her own property. A married woman is as free as a single one so far as the law goes. And there are in nearly all the states so many causes for which she can obtain a divorce from her husband that it can be said that she can obtain a divorce at will.

Of the status of the man it is not necessary to speak, as, except where the institution of *patria potestas* has prevailed, he has been free to dispose of himself, and has, within certain restrictions, had the ownership of his own property. For the most part, too, he has had the right of divorcing his wife for cause and for no cause. His rights to-day over his person and property are no greater than those of the woman, if they are as great. Thus, in some states of the union the "estate by the courtesy" having been abolished, married women can convey and alienate their real property without the consent of their

husbands ; but wives have still an inchoate right of dower in their husbands' lands. As to marriage, the drift in the past century in all countries of Europe and America, has been to regard it ever more and more as a purely civil contract. Yet among Christian people it is the custom to ask the benediction of the church. In many countries the priests and other ministers of God are made the officers of the state to perform marriage.

It is not necessary to examine the divorce laws of the European states. The English Divorce Act was not passed until the year 1857, the laws of Germany and Switzerland were not enacted until 1874 and 1875, and that of France as recently as 1884. And yet so many and so frequent have been the applications for divorce, especially in France, that even the politicians have become alarmed for the safety of society. Let us glance at the laws relating to divorce in our own land. It is, as I take it, the chief fault of the constitution of the United States that the status of its citizens, with the exception of the negro, is determined by the laws of the several states ; that is, that the citizens of the United States are citizens, first, of their respective states of the union, and then of the United States. Thus it is that the laws that relate to marriage and divorce, as well as to many other things,

have to be enacted by the states. It would be impossible for me here to classify and to enumerate all the various causes that have existed or that do exist for divorce. One may say, on looking over the various provisions that the different state legislatures have made: "*Quot homines, tot sententiæ; quot civitates, tot leges.*" At the present moment there are in the United States competent courts in every state but one to which restless and unhappy men and women can have recourse. The petitioner can take his or her choice, subject to a trifling delay and residence for the purpose of jurisdiction, of forty-nine different laws. There are forty-one different causes which will entitle him or her to absolute relief, and thirty-two giving limited divorce.<sup>1</sup>

When we read of such legislation as this and learn of the lax manner of procedure under the divorce laws in the various state courts of the union, we can easily see how strong are the blows that have been struck at the basis of society, how fast are the state and government tending to disintegration here in the United States. It is true that individualism has done much to develop the spirit of humanity and to rear the fabric of freedom, and yet the individualism that arose and struck off the bonds of ecclesiastical and monarchical governments was

<sup>1</sup> (Publications Mich. Pol. Science Asso., April, 1895, p. 59.)

not the individualism of to-day, which would break up the family life and society into monads; rather was it the individualism of the heads of families, demanding for all their members the rights of family life, and for society its proper mould and form.

The distinction made by M. Demolins between society of a communistic and of a particularistic formation<sup>1</sup> has undoubtedly a basis of truth. All societies have a tendency toward either one or the other of these modes of existence; but to say that they divide upon this formation and that upon this division hangs their strength or lack of strength, is to allege too much, and begs the question propounded in his book. It is evident that societies where there is a tendency to rely upon oneself, and not upon the community, will be superior to those where the tendency is to rely upon the community, and not upon oneself, and that the former will succeed in the long run in the struggle for life better than the latter. But we must have a care; the societies of a particularistic formation (if the Anglo-Saxon peoples are their best exponents) are not exactly what M. Demolins seems to imply that they are: societies wherein the individual is all in all and the family is of secondary impor-

<sup>1</sup> (*A quoi tient la supériorité des Anglo-Saxons, Liv. I., Chap. iii., p. 53.*)

tance. The family of the Anglo-Saxon (or American) has never had the same form it has had in France or in Germany, owing probably to the fact that the Roman law was never the common law of England and America, and its early rigid maxims therefore of as high a value as its later liberal principles; but it has had no less stability, and has been of no less consequence in the development of the Anglo-Saxon and American peoples.

The Anglo-Saxons have taken their homes and all their home institutions with them everywhere under the sun. As colonists they have always emigrated with their women and children, to the bleak shores of Massachusetts, to the fertile river bottoms of Virginia, to the colonies of the African Cape, to India, yes, even to Australia, though at first the men went to that island alone. On the other hand, women have ever had to be sent to the French colonies; and it is the same to-day as it was three hundred years ago. And this custom that we have observed to exist in the Anglo-Saxons we see likewise in the Americans. They rarely, if ever, become mere *coureurs de bois* and outlaws. Wherever they went as pioneers into the wilderness of their broad land they built themselves cabins with the first work of their axes, and therein they placed their wives and little ones, and estab-

lished homes, each man for himself, yet each relying upon his neighbor for support and defence. And these homes they made as comfortable as possible, as soon as possible. And this trait of the Anglo-Saxons and Americans has not escaped the notice of M. Demolins.<sup>1</sup> "The man," he says, "who does not rely any more upon the community, cares less for the outside of life and more for the hearth. He regards the hearth as the true citadel of his independence. He names it, and defines it by a word that is untranslatable [in French] in which he puts all his soul—the home." Societies in which the home is of primary importance can not be said to be particularistic, or if it be so said, their particularism is not of the individual, but of the family.

It may seem to be exaggeration to say that the cause of the present low state of public spirit in the United States is the result of a low view of the marriage bond, but history tells us that when there has been a low view of marriage, there has been a low view of public duties and obligations. Certainly when divorces are granted as frequently as they are in the various states of the union, there must result a tendency that will weaken the idea of authority and the necessity of obedience. "There is abundant evidence," says Westermarck, "that marriage has, upon the

<sup>1</sup> (*Id. Liv. II., Chap. iv., p. 192.*)



whole, become more durable in proportion as the human race has risen to higher degrees of cultivation, and that a certain amount of civilization is an essential condition of the formation of life-long unions.”<sup>1</sup> The modern movement in the direction of promiscuous marriages, easy separations and temporary relationships is a distinct reversion to barbaric and even brutal conditions; it cannot help but tend to the destruction of the vast and complex work of society which man in his long struggle for the higher and nobler life has so laboriously built up. We must understand that marriage is not a human contrivance. It is a divine order, and it runs back to the very beginning of creation. It is indeed the law of life; not only of the animal but also of the vegetable order of creation, and the higher life rises in the scale of being, the nearer does it approach to both monogyny and perpetuity. For Christ did not propound a new view of marriage; He reaffirmed the old and unchangeable order. God in the beginning created man in His own image—“In the image of God created He him; male and female created He them”;<sup>2</sup> and when He blessed them and sent them forth to replenish the earth and subdue it, He sent them forth, not singly, but in pairs,

<sup>1</sup> (History of Human Marriage, Chap. xxiii., p. 535.)

<sup>2</sup> (Gen. i. 27, R. V.)

as two yet one, as a family and as society in embryo. All history shows that when the family has been strong then has the state been strong, and that when the family has been weak, then has the state been weak. It follows inevitably, that the dissolution of the family is the dissolution of society, and that the state directly reflects society, which is conditioned by the family life.

Marriage is the one institution that has endured from the beginning of civilization until now, and it is its best and truest touchstone. As men have conducted themselves in the marital relation, so have they conducted themselves in the social life, so have they influenced their governments. We, here in the United States, who have grown out of conceit with our state legislatures, like to think that the condition of government does not reflect the condition of social life, but we veil our eyes in vain. Government, and by government now I mean the laws that establish and maintain the social order, is the mirror of the condition of society. When the laws are lax and uncertain and the observance of them negligent and insufficient, society is in process of decay. When they are firm and sure, then is the observance of them likewise so, and society moves on to better and nobler ends. A healthful development of society is always desirable,

and we must look for change in the way of social life. It is only the unhealthful development that we deplore, and the development cannot be other than unhealthful when the basis of the state is made weak and dissoluble. It is for this reason that the giving of suffrage to women must be viewed with alarm, and deplored. There is no inequality between the man and the woman; the one is the complement of the other, and neither can exist alone and have the race survive. But the giving of suffrage to women means another blow aimed at the stability of the marriage relation. It has a tendency to divide authority, and thus to destroy it. As the suffrage is not a natural but a political right, the better way would be to give every married voter an additional vote in right of his wife. The married have, as a rule, far greater interest in the stability of the community than the unmarried. It is the glory of the Christian Church that it has ever held a high view of the married state, and it is greatly to the credit of the Roman Catholic and Protestant Episcopal churches to-day that they stand, as they have stood in times past, for the sanctity of marriage. The Roman Church, on principle, recognizes no dissolution of the marriage tie for causes arising after marriage; the Protestant Episcopal admits that for the cause of adultery alone an absolute divorce can be had,

in which case the innocent party may remarry again.<sup>1</sup>

After all, the citizens of the state generally are members of the various Christian churches and denominations. Upon them rests the responsibility for the loose views of marriage that prevail. It seems to me that no greater thing can be done for the good of society than to convince the various members of the various Christian churches and sects of their shortcomings in this regard. It is hard, of course, where the husband treats his wife with cruelty, or where he wilfully deserts her, to say to the woman, you must remain this man's wife until death do you part; but if there were no possibility of divorce there would not be so much cruelty, there would probably be fewer desertions, there would certainly be fewer improvident marriages. What is wanted is a law to prevent all marriages until both parties are of the age of twenty-one, without the consent of the parents of both. And a law, also, putting a heavy penalty upon the man who is the father of illegitimate children would likewise be useful; men would probably prefer to have legitimate ones. Marriage ought also to

<sup>1</sup> There is a strong movement on foot in the Episcopal Church to prohibit a remarriage of divorced persons, except of course in the case where parties seeking to be remarried have been divorced from one another.

legitimate all children of parents born before wedlock. It is wrong to punish the innocent.

But our laws and policies will be useless unless men and women understand that marriage is not a civil relationship, unless they are persuaded that it is a sacrament, or, at least, that it is sacramental in character. And this brings us to a recognition of the fact that Jesus Christ is the great teacher of morality, and that He laid down the principle upon which marriage is based, and upon which it must continue, that God made man two yet one; and that the two made one cannot dis sever the marriage bond by the aid and assistance of man. Men may write all the rhetoric they please in regard to marriage, they may speak of its ideal beauty and perfection, but they will convince no one, not even themselves, of its sanctity unless they believe in the authority of Jesus Christ. And, strange as it may seem to the secular mind, those who believe in Christ, if they come together in marriage, are more likely to live in peace and amity together than those who do not. For they see God's image in their companion in life and in their offspring, and they endeavor more and more to conform to the teachings of the Son of God. Who that loves Christ and who that loves wife or husband will think of the trials and perplexities of married life? Will they not rather look

upon them as means toward the development of their characters? The truth, yes, the primary truth of a great many marriages, is that men and women enter into them in order to have their own way more effectually; but this is impossible. Marriage is the surrender of self. It illustrates constantly our Lord's great words: "Who-soever shall lose *his life* shall preserve it."<sup>1</sup> It is God's way of neutralizing the inherent selfishness of the individual. It is, so far as we can see to-day, the only way of showing men what should be the limit of aggressive competition, making the world perceive that the final establishment of individualism means the inevitable destruction of society and the state. Out of the family life the state arose, upon it it rests, for it it exists, with its decline it will decay and fall away.

It must not be supposed that the multiplication of divorces is the direct cause of the decay of society; it is a symptom rather than a cause, and to this conclusion all the best thinkers have come. It is therefore the family that must be protected and made strong, and the family life that must be fostered and enlarged. How this is to be done exactly it is difficult to say; but we perceive that religion must do its work and so must education. Where the religion of Christ is dominant, there a high view of the family life

<sup>1</sup> (St. Luke xvii. 33, R. V.)

and of the marital relation is held, and men and women are most unwilling to dissolve the marriage bond. But the teaching of Christ does not seem to be sufficient in these days to satisfy the hearts of erring men, and education must come in to its aid to convince their minds. And this education should begin with the child. The true function of the home should be dwelt upon; the necessity for its unity; its worth in morality and ethics; the respective places of the man and the woman; the value of the sexes in relation to one another; the dignity of motherhood, and the greatness of fatherhood.

Jesus Christ, then, we must understand, made the family and not the individual the social unit, and so do ancient law and history show it to be. It must therefore be kept intact, or society will dissolve, and the state will pass on to lower and ever lower forms of existence. Upon its preservation hangs the whole future of democracy and the progress of humanity. Religion and education have a mighty task to perform.

## LECTURE II.

### THE ANCIENT STATE.

LET me first clear the ground for this lecture by stating that I do not intend to examine the history and structure of the states of Egypt, Assyria and Persia; not because the peoples of these states have had no influence upon the development of the states of Europe and the west, but because their influence has been too remote to be precisely traced, and because it was never exerted directly. The sources of development of the modern state are found in the history and formation of the Greek and Roman cities, in the institutions and character of the Hindu and Germanic peoples, and in the settlement and polity of the Hebrews. With the settlement and polity of the Hebrews I associate, of course, the religions that we have obtained from them, both the Jewish and the Christian.

Too little attention has, it seems to me, been given by writers to the civil side of the history of the Hebrews. Because all the acts of Israel have in their history some religious significance, students have in their examination of the source



and rise of the development of civilization and the state, ignored the evidences that they afford of the ways in which the state took its rise, and progressed on to articulated sovereignty. And it has been on this account that for many generations the patriarchal theory was discredited. Men hesitated to believe that the history of Abraham was anything other than an exception to the general ways of life of the ancient world, if it were not a mere legend and tradition of the Hebrews; but Abraham's story, though it is different in its incidents and details, presents the same points, so far as it shows the way how the state took its rise, as does the story of Job; and the stories of these two patriarchs are paralleled by that of the return of the Heraclidæ in Grecian, and of the adventures of Æneas and his followers in Roman, history. History and comparative jurisprudence herein agree; they each assert that the earliest condition of the human race known to the one and to the other was patriarchal.

Let us study the history of the state of Israel. Where does it begin? In the power of Abraham over his own family and household. When Abraham as yet dwelt in Ur, in the land of the Chaldees, he was under the authority of his father, but when his father died in Haran, and he came away and went as a stranger into the

land of Canaan, he and his wife, and Lot, his nephew, and the souls they had gotten in Haran, with the substance they had gathered, he became the head of an independent and autonomous state. We have become accustomed to think that no state can exist without legislative, judicial, and executive powers fully articulated. These powers adhere in all states *ex necessitate*, but it has not always been necessary to define them. In the ancient state they were united in the king or chief, without any attempt to discriminate between them, indeed, without any thought of their existence. It was reserved for the modern constitutional state to analyze its sovereignty, and to declare its constituent elements. Yet it is not easy, even to-day, when they are so well understood, to keep them defined. The courts constantly legislate, and the legislative power frequently executes the laws.

We perceive that Abraham, when we examine his history, possessed all the powers of government. He decided what was right for his family, and he carried his decisions into effect. And this was the way of all primitive society. It was only after the states had grown and their members had become numerous, whose interests had become diversified, that it became necessary to anticipate differences by set rules. In primitive times the chiefs or kings decided every case upon

its merits. Their judgments did not rest upon anything which we can call law; for the earliest society knew nothing of law, nor did it have any record of it. Out of these judgments some principles gradually came to be recognized, and a public opinion grew up that demanded that the principles recognized here and there, be laid down with exactness. Hence arose the Codes of Solon and Lycurgus, the law of the Twelve Tables of Rome and of the Two Tables of the Hebrews. The history of the Hebrews from the time of Abraham to that of Moses is that of a patriarchal state, pure and simple. Abraham, Isaac, Jacob, and probably Joseph afterward, ruled in every sense of the word, and they ruled over their descendants and brethren. Hence it was that their rule had something in it of a moral and constraining power, and was looked upon as an authority, and the attitude of their subjects was one of obedience and not of subjection.

The only distinction to be made between the rule of Abraham and the Hebrew patriarchs, and the other kings and chieftains of the ancient world, is this, that the Hebrews had a higher conception of the Almighty Godhead than the others; for all ancient rulers, so far as we know, rested their authority upon the approval of their gods; and all of them claimed to be descended from gods and demigods. But this distinction

is of vast importance, and has been full of meaning for us, who have received our religion and so many of our social and political ideas from the Hebrews. Let me not be misunderstood: it is evident that the Hebrews at first looked upon Jehovah as a tribal God, though as greater and more powerful than all other gods; but the God of the Hebrews was not a deified man: He was not their ancestor, nor the ancestor of their great father Abraham, but his God. And so it came about naturally, as the Hebrews were taught by prophet and seer more and more concerning the being of God, that they understood that Jehovah was the creator of all the universe and the father of all souls, that they perceived, however dimly, that all men are of one universal family. The Greek, too, as we know, had arrived at this same idea, but not by means of religion, but by process of thought. Yet the Greek, unlike the Hebrew, never acted upon this idea, nor did he bring it to its logical conclusion.

The speech of St. Paul on Mars' Hill is the greatest one that has ever proceeded out of the mouth of man, those of the Son of Man alone excepted: "The God that made the world, and all things therein, He, being Lord of heaven and earth, dwelleth not in temples made with hands; neither is He served by men's hands, as though He needed anything; seeing He Himself giveth

to all life, and breath, and all things; and He made of one every nation of men for to dwell on all the face of the earth, having determined *their* appointed seasons, and the bounds of their habitations; that they should seek God, if haply they might feel after Him, and find Him, though He is not far from each one of us: for in Him we live, and move, and have our being; as certain even of your own poets have said, For we are also His offspring.”<sup>1</sup> It seems strange that it needed the teachings of Christ to make the Jews and the world generally to realize and understand this great truth, when the story they had of the creation showed them the unity of the race, and pointed out that God, though He were a Father to men, was not a father after the flesh.

The history of the Israelites, after they came to the land of Canaan, followed in many respects the same lines that the histories of the Greek and Roman peoples did; indeed, it followed the same lines as those of the ancient peoples generally. The people drove out the old inhabitants, as far as they were able; then they took the land into possession and divided it between their various tribes and families, and they dwelt in cities and villages, the near to the near of kin. What the size of the early cities of Canaan was, we do not know, but it is evident that they must have been

<sup>1</sup> (Acts xvii. 24-29, R. V.)

insignificant, when we consider their great number. It is not probable that they were anything like those that afterward arose to greatness in Greece and Italy and in Palestine itself. Speaking of the genesis of the City-State of the Greeks and Romans, Mr. Fowler says: "A vast amount of research has of late years been made and published on this subject; and the chief result of it which concerns us here has been to show (1) that before the final settlement on the land takes place, the main stock is always found to consist of groups or cells, held together by the tie of *Kinship*; (2) that after the settlement has taken place, these groups or cells are still found, but now fixed upon the land in forms which may roughly be described as *village communities*, consisting of a number of families united together."<sup>1</sup>

Mr. Fowler does not undertake to show what it is that holds these kinsfolk together, but M. Fustel de Coulanges proves conclusively that it is religion, the religion of the family and of the *gens* and of the tribe. "An excellent picture of the way in which these local groups may be supposed to have come into existence is supplied by Sir Henry Maine in one of his most valuable lectures on these subjects. He quotes the words of an Indian poetess, describing the immigration of a people called the Vellalee, into that part of India

<sup>1</sup> (The City-State, Chap. ii., p. 28.)

which was once famous as Arcot. 'The poetess compares the invasion to the flowing of the juice of the sugar cane over a flat surface. *The juice crystallizes, and the crystals are the various village communities.* In the middle is one lump of particularly fine sugar, the place where is the temple of the god. Homely as the image is, it seems in one respect peculiarly felicitous. It represents the tribe, though moving in a fused mass of men, as containing within itself a principle of coalescence which began to work as soon as the movement was over.' We cannot, of course, be sure that such an image as this would exactly represent the way in which Greeks and Latins, or Celts and Teutons, settled down on the lands which they conquered; for the history of man, as of plants and animals, presents local variation everywhere. But I know of no better way of getting a general idea of what we suppose to have happened at this momentous era in the progress of a people, than by laying to heart this singularly happy illustration."<sup>1</sup>

The first great characteristic of these early village communities was kinship; this is shown conclusively by Maine and Fowler and de Coulanges, indeed, by all who have written on the origin of civil society. And this we see likewise to be the case when we read the history of the settlement

<sup>1</sup> (*Id.*, pp. 29, 30.)

of Israel in the books of Joshua and Judges. It is hardly necessary for me to undertake to show how these communities came together in various groups and founded great and famous cities, but it is probable that there was in some community, or group of communities, a leading family in whose veins the blood of a common ancestor was supposed to run the purest. From the members of this family a leader would, as a rule, be chosen for some military expedition, whose authority, if he were successful, would be augmented, and he would have a larger share of the land appropriated from the conquered village societies; and thus he would become powerful and be elevated eventually to the place of chief or king.

Of the rise of the city-states of Athens and of Rome, as well as of Jerusalem, we have accurate historical accounts. But we must always understand that behind the city-states of the classic peoples there is an older civilization, the same as there is behind the Holy City of the Jews. It is of the older and original civilization that Sir Henry Maine treats generally, that is, of the state of life of which we have glimpses in the books of Joshua and of Judges. Let us see how the City-State of Athens arose; we have an account of it by Thucydides, which scholars accept as generally true. He says<sup>1</sup> "In the days

<sup>1</sup>(ii. 15.)



of Cecrops and the first kings down to the reign of Theseus, Attica was divided into communes, having their own town halls and magistrates. Except in case of alarm, the whole people did not assemble in council under the king, but administered their own affairs, and advised together in their several townships. Some of them at times even went to war with him, as the Eleusinians under Eumolpus with Erectheus. But when Theseus came to the throne, he, being a powerful as well as a wise ruler, among other improvements in the administration of the country, dissolved the councils and separate governments, and united all the inhabitants of Attica in the present city, establishing one council and town hall. They continued to live on their own lands, but he compelled them to resort to Athens as their metropolis, and henceforward they were all inscribed on the rolls of her citizens. A great city thus arose, which was handed down by Theseus to his descendants, and from his day to this the Athenians have regularly celebrated the national festival of the Synœcia, or 'union of the communes,' in honor of the Goddess Athenè."<sup>1</sup>

The genesis of Rome was different in detail, and yet it manifests the same general features as that of Athens. We know from historical re-

<sup>1</sup> (Jowett's Thucydides, p. 104, Am. Edition.)

search and a study of the laws of Rome, that the family was the unit and centre of all society and government. We perceive, too, that the various families were associated together in different groups, called *gens*. How the different families grew and developed into the various *gentes*, it is impossible to tell exactly, we can only imagine. A family, of course, at the beginning, had but one trunk or branch, and the other and younger branches gathered around it later on, some naturally, and some by adoption. De Coulanges says: "The Aryan race appears to have been composed of an indefinite number of societies of this nature, during a long succession of ages. These thousands of little groups lived isolated, having little to do with each other, having no need of one another, united by no bond religious or political, having each its own domain, each its internal government, each its gods."<sup>1</sup>

It was religion which held the family together; it was religion which held the *gens*, it was religion which held the city. Each family had its own special divinities, its Penates, and its ancestors. Each *gens* had its gods or demigods, each city its protecting divinities. A curious story is related to show the strong hold that the worship of the *gens* had upon the Roman people, of Fabius, who was called "the shield of Rome." It

<sup>1</sup> (The Ancient City, Book II., Chap. x., p. 153.)

was during the second Punic war, and Fabius was making head against Hannibal. Certainly it does seem that it was of first importance that he should remain with his army; but he left it in the hands of an imprudent and incompetent lieutenant and went to Rome, because the anniversary of the sacrifice of his *gens* had arrived, and it was his duty to perform the sacred act.

The gods of the various cities were legion. There were first the gods that were of the same nature as those of the primitive religion of the family—Lares, Penates, Genii, Demons, Heroes. Then there were the gods of other species, like Jupiter, Juno and Minerva, toward whom the aspect of nature had directed the thoughts of men. Then there were the city gods who lived within the walls of the various city-states. Xenophon says that Athens had more religious festivals than any other Grecian city. The whole territory of Attica was covered with temples and chapels. It is well known that Rome brought home the conquered gods of the cities that she subdued. And strange to say, law itself developed out of religion and religious observances. And this development of law we find among the Greeks and the Romans and the Hebrews alike. It was the kings who were the judges in the earliest times, and when a king decided a dispute by a sentence, his judgment was assumed to be the result of

direct inspiration. "It is the king," says Grote, "who is the grand personal mover of Grecian heroic society. He is on earth the equivalent of Zeus in the agora of the gods; the supreme God of Olympus is in the habit of carrying on his government with frequent publicity; of hearing some dissentient opinions, and of allowing himself to be wheedled by Aphroditê, or worried into compliance by Hêrê; but his determination is at last conclusive, subject only to the overruling interference of the Moeræ or Fates."<sup>1</sup> What the king decides is what Zeus decides, and Zeus is not so much a lawgiver as he is a judge. The Hebrews we observe were for a long time governed by judges, raised up directly by God, and inspired by Him to speak right judgments.

And so, when the families and *gentes* who lived in various small communities came together to build the city of Rome, they laid the foundation thereof with religious observances. It is probable that they erected first some fortified place of refuge, which served also as a centre of worship and traffic. Each citadel in Latium, and probably in all Italy, was common, so far as we can learn, to several village communities, and was the object of special religious observances, both in its foundation and in its maintenance, a fact which became the source of the legend of

<sup>1</sup> (History of Greece, Vol. II., Part I., Chap. xx., p. 74.)

the building of Rome by Romulus. There can be very little doubt that originally, and in the very early period, the Latin people were grouped together in clusters of village communities, each possessing a citadel, which was the centre of a common worship, probably that which afterward became the worship of the various *gentes*. The whole Latin race had a common political centre and a common worship on the Alban Hill, where Jupiter Latiaris was revered. One of the groups of these communities, which participated in his worship, had occupied as its citadel a square hill some one hundred and sixty feet above the level of the sea, whose rocky sides fell precipitously to the south bank of the Tiber. Three different communities seem originally to have had their residence, as well as their refuge, on this hill, while their farms lay around it; these three oldest settlements of Rome were the Cermalus, the Velia and the Palatium. The whole hill came eventually to be called the Palatine Hill; its natural strength was increased by massive walls, and its position, as commanding the Tiber and the outposts of the Latin people toward Etruria, marked it out for future greatness.<sup>1</sup>

Of the origin of Jerusalem, which eventually became the city-state of the Jews, absorbing all the life and strength of Judea, we have an exact and

<sup>1</sup> (The City-State, Chap. ii., p. 54.)

accurate account. The Israelites, it must be remembered, had no proper family worship apart from Jehovah at the place where the tabernacle was pitched, or apart from the temple afterward founded at Jerusalem. And they had no tribal worship except as they set up the same unlawfully. We know, of course, that the history of the Israelites from the time of Moses to that of Ezra, is that of apostasy after apostasy from the worship of Jehovah; but these fallings away of Israel were not to worship, as far as we can learn, the *manes* of their ancestors and the heroes of their tribes, but rather the gods many and the lords many of their neighbors. It is probable that the principal reason why the Israelites were prone to idolatry was because the worship of these divinities was so attractive, by reason of the sensual pleasures they afforded. The counsel that Balaam gave, by which the Israelites were so easily led to commit trespass against the Lord, in the matter of Baal-peor, showed the drift of their evil inclinations from first to last. Let me say that I know of no history that is more full of sadness than that of the Hebrews, as set forth in the book of Judges, during those evil days when "there was no king in Israel: every man did that which was right in his own eyes."<sup>1</sup> The story of the invasions and insurrections and evil doings, and of the

<sup>1</sup> (Chap. xxi. 25, R. V.)

quarrelings and murderings and killings, makes us feel that mankind in the beginning of the formation of society was not much raised above the level of the brutes.

There is this difference to be noted between the early history of Israel and that of the gentile nations by whom they were surrounded, and that is, that, whereas, the Israelites in the beginning had no kings, these had many. And this difference we perceive when we study the early history of Greece and of Italy. Every chief is called a king, and so is often the head of a family and tribe. Another difference is this, that the kings of the Canaanites and the Greeks and Latins had the power or right to sacrifice. Homer and Virgil represent the kings as continually occupied with sacred ceremonies. Demosthenes tells us that the ancient kings of Athens performed themselves all the sacrifices that were prescribed by the religion of that city. And Xenophon says that the kings of Sparta were the chiefs of the Lacedæmonean religion. And the same was true of the Roman kings. They were king-priests, and were always inaugurated with religious ceremonies. The second king, Numa, Livy tells us, fulfilled the greater part of the religious functions of the city-state, but as he foresaw that his successors, having often wars to maintain, would not always be able to care for

the sacrifices, he instituted the *flamines* to replace the kings, when the latter should be absent from Rome.

In Israel the right to sacrifice and to care for the things of religion were confined to the family of Aaron, assisted by the whole tribe of Levi, which were, as it is written, "set before Aaron, the priest, that they might minister unto him."<sup>1</sup> Aaron was made the High-Priest, and his sons the common priests. After Aaron his son Eleazar, and after Eleazar, one of his descendants, from generation to generation, succeeded him in this great office. It seems strange, at first sight, that the High-Priests of Israel never became kings until the days of the Maccabees. But a little reflection, however, will show us why. Jehovah was at first regarded as the king of the Hebrews, and the priests who ministered before Him did not dare to usurp the civil authority. The gods of the Greeks and the Romans, on the other hand, were never considered to be the rulers of the people, but only divinities whose anger was to be appeased and whose appetites were to be satisfied. And so the laws of the Greeks and the Romans in the beginning were not considered to be based so much upon the principles of right and wrong, but rather upon expediency and custom. But the laws of the Hebrews were held to

<sup>1</sup> (Num. iii. 6, R. v.)



be based upon the eternal principles of justice, to have come, as it were, by direct revelation from the fountain-head of truth.

It was because the people grew weary of the rule of a moral governor, as expressed in moral ordinances and statutes, that they desired to have a king to rule over them like all the other nations, and though Samuel, the judge, to whom they applied, foretold what would be the manner of their king, that he would oppress and afflict them and treat them unjustly and bring them into servitude, they yet refused to obey his voice and would have a king to judge them and to go before them to fight their battles, like the nations of the gentiles. It was not a man of a leading tribe, nor yet of a leading family, that was taken first by Samuel to be king over Israel, but rather was it, "a young man and a goodly;" one, "who from his shoulders and upward was higher than any of the people."<sup>1</sup> How it was that Saul and his family were set aside, and David and his family were preferred in their stead, it is not necessary to relate; but it is worth our consideration to note that, although the tribe of Judah, to which David belonged, was a great and strong tribe, and his family was what may be called a leading one, yet there was nothing in the outward condition of his father, Jesse, that

<sup>1</sup> (1 Sam. ix. 2. R. V.)

would lead Samuel to select David to be the king of Israel, and to displace the obstinate and rebellious Saul. The kings of Judah and Israel did not become such by reason of any imaginary descent from some tribal hero or demigod, nor yet were they elevated to their high position by the people, like the tyrants of Greece and of Italy, in order to make head against an oppressive aristocracy or oligarchy, said to be descended from such heroes and gods. The kings of Israel, or, at any rate, the first kings, became such by the will of God as expressed by His prophets and seers. But the kings of Judah and Israel had not the power or right of sacrifice. Church and state, if we may so speak, religion and civil rule, were divorced in the very beginning of Jewish history. They were to support and supplement one another, but they were not to be crossed and confused. We think this a modern principle or idea, to which we have come through many generations of struggle and tribulation, but it is as old as the kings of the Hebrews.

How the city of Jerusalem arose to prominence and became the centre of the life of the Jews, we have, as I have said, an accurate account. Jerusalem, which was a city of the Jebusites, was situated on the border between the tribes of Benjamin and Judah. It consisted of an upper and a lower city, and although the lower city had

been taken by the tribes of Judah and Simeon when they commenced their task of taking into possession the land allotted to them, and afterward by the Benjaminites; the upper city remained secure in the possession of the Jebusites until the time of David. It was after the death of Saul, and the reunion of the elders and the warriors of the various tribes under David at Hebron, that David and all Israel proceeded to Jerusalem and laid siege to it, and took it. David immediately began to secure himself in his new acquisition. He enclosed the whole city with a wall and connected it with a citadel. In this latter place he took up his own quarters, and the Zion of the Jebusites became the city of David. But it was the arrival of the Ark, the sacred depository of religion, that gave to the city its chief importance. The old tabernacle, being now pitched on the height of Gibeon, a new tent was spread on the fortress for the reception of the Ark, and here "in its place," it was deposited with the most impressive ceremonies, and Zion became at once the sanctuary as well as the citadel of the nation. It was, then, by reason of two things that Jerusalem became so famous and important and the centre of the national life of the Hebrews, first, because of its strong and advantageous position; secondly, because it became

the depository of the Ark, the place where the temple was afterward built.

How it became the city of the whole people, and not simply of Judah and Benjamin, we understand when we consider that the Hebrews worshipped not the *manes* of their ancestors, nor any tribal gods, but Jehovah, the self-existing One, the Lord God Almighty; and that their priests had not been selected from the people by reason of priority of birth, or of any other fancied superiority, but by the will of God Himself; as were also their kings. It was because of these great facts that there was no difference between man and man, family and family, or tribe and tribe, among the Jews, that they were all governed by the same laws and subject to the same obligations, that the family idea prevailed so strongly among them, and that the principles of government for the family became the principles of government for the nation. The family, as we have seen, was the basis of society among the Greeks and Romans, the origin of the state, as Aristotle shows; but, let us observe, because the family gods of the classical nations were so small and so many, the city-states of the Greeks and Romans speedily outgrew the family idea; while in Israel the family idea grew and expanded and took in all the nation. The cities of the Greeks and Romans were federations, as it were, of families and *gentes*

and tribes, while the city of the Jews was an extension of one family, that of Abraham, Isaac and Jacob. Families in Greece and Rome which had not been so fortunate as to join in the establishment of this or that city, had to push their way in by many acts of violence; but when the city of the Jews was established, it extended itself to all the families of the nation at once. Jerusalem became the centre of a family life, and it possessed this great feature to the end, in spite of the separated kingdoms of Judah and Israel. Of course, here and there, there were prominent men and leading families, but no men, or family of men, among the Israelites ever esteemed their brethren of less importance or dignity in the sight of Jehovah than they esteemed themselves; all regarded all as brethren.

It was for this reason that among the Hebrews the state manifested in its life that order which we have learned to call the social order, a state where regard is not had simply for hard and fast rules of law, which had become crystallized through practice and submission, but where regard is had for what is essentially right and inherently wrong, looking upon men as equal and as members of one great family. We are apt to regard socialism as a new thing, but though the word itself is new, in its essence it is as old as the law of Moses. The reason why people gen-

erally think of socialism as new is because of the change that industrial life has made in the methods and manners of men, and because of the changed way of the modern production of wealth and of its accumulation. The aim of socialism has ever been the same from its inception: a more even distribution of the wealth of the period, or of money or of money's worth, as a means of human happiness. The agitation of socialism, in the sense of a struggle for greater equality, began in the state immediately after the termination of the period of patriarchal society, and we find this to be the case in Greece and Rome as well as among the Hebrews.

We cannot say that the patriarchal period had ended when Moses became the leader of the Hebrews, but it was coming to an end, and the laws he promulgated were anticipatory of a state wherein the claims of the family, pure and simple, must not be ignored. This we must always remember of the Mosaic dispensation; the socialism of Moses was based upon the family idea. The aim of Moses was, as we can clearly see, to prevent by wise institutions great inequality among the Hebrews, preserving at the same time private property and inheritance. "We find," says Graham, "in Leviticus a system of land-holding intended to secure reasonable equality, and a very re-

<sup>1</sup> (Socialism New and Old, Chap. ii., pp. 22, 23.)

markable institution, the Jubilee, designed to prevent the Jewish people from being permanently divorced from the land. We have unusual clemency shown to the honest debtor, by which the purpose of a good Bankruptcy Law was effected; and a special provision for the poor, if any such should appear under a general socialistic polity, expressly designed to prevent extreme poverty. The usurer as an evil possibility is foreseen by Moses, and is warned from exercising his function, or practicing his methods, at the cost of his brethren in their necessities. We find equality aimed at, and fraternity everywhere inculcated as the surest moral guarantee of equality. But all this is of the essence of Socialism. Moreover, it is State Socialism or Socialism embodied in fundamental institutions, and under the consecration and guardianship of Law; and it had the further consecration of Religion, which was in the beginning inseparably connected with Law."

We know that the socialism of Israel failed. Individualism, that is selfishness, the curse of society ancient and modern, gradually asserted itself, and gross inequality of condition came into existence, and the rich began to oppress the poor. But the laws of Moses acted as a deterrent and clog, and made the change from socialism to individualism slow, and a return to the family idea always pos-

sible. Hence arose the prophets, who denounced the proud and the rich continually. All the prophets were socialists, and Isaiah, the greatest of the prophets, was the greatest socialist of them all. "Woe unto them that join house to house, that lay field to field, till there be no room, and ye be made to dwell alone in the midst of the land,"<sup>1</sup> said this great teacher. It was the increase of the importance, and of the riches of the few at the expense of the many that brought so many evils upon the land. Israel is exhorted again and again to return to the days of simplicity and righteous living. "Let the wicked forsake his way, and the unrighteous man his thoughts: and let him return unto the Lord, and He will have mercy upon him; and to our God, for He will abundantly pardon."<sup>2</sup> At the time when Jesus of Nazareth was born, the socialistic features of the Jewish commonwealth had practically disappeared. Men no longer felt the strong impress of the family life,<sup>3</sup> and the central idea that the descendants of Abraham, Isaac and Jacob were practically one family, and that each one's prosperity was the prosperity of all, and each one's adversity the adversity of all, had disappeared. The city and commonwealth of the Jews were ripe for the destruction which very soon, after the death of Christ, came upon them.

<sup>1</sup> (v. 8, R. V.)    <sup>2</sup> (*Id.*, LV. 7, R. V.)    <sup>3</sup> (St. Mark vii. 11.)



It seems unnecessary for me to speak of the decline and fall of Athens and of the Grecian cities, and much less of the great Latin city of Rome. The history of their decline is known to all. The Greek city reached in Athens, under Pericles, a perfection of civic life that was wonderful, and that bade fair to be enduring, and yet it speedily passed away. The trouble with Athens, and the Grecian cities generally, lay in the inelasticity of their citizenship, and the fact that there was always to be found in them the unprivileged many making war against the privileged few, demanding rights and powers which the few would yield only because of force. The war of the *δῆμος* against the eupatrids continued from the time of the overthrow of the earliest monarchies to the days of the Roman conquest. Sometimes the people pushed in and acquired rights and privileges, but more often they were shut out and acquired none. But when they did acquire full rights with the aristocracy there was always another class, of aliens and freedmen and outlaws, outside, demanding recognition and a share of political power. Hence it was that factions were continually arising in the Grecian states, consisting of the few, the rich, the well-born, and the good, as they loved to call themselves; and these were at an endless feud with the many, the poor, the base, and the low-

born, as their enemies loved to style them. It is impossible here to relate the many struggles that took place between the few and the many, the oligarchies and the democracies, of the Grecian cities. They were as numerous as the private wars that arose in mediæval days; but I do want to speak of the evil political spirit that arose and that became the furies of Greece, and the ultimate cause of its downfall, the spirit that the Greeks called *στάσις*, or sedition, a disease of society which sprang out of the great inequality which existed between the rich and the poor, and which may be defined as "a standing up in the state of one party with a malicious intent toward another."

During the Peloponnesian War this dreadful thing caused so much anxiety in the mind of Thucydides that he called the attention of his countrymen to it in language so weighty and so earnest that it is worth our while to see what it is that this philosophic historian tried so seriously to portray and define. "Revolution," he says,<sup>1</sup> "brought upon the cities of Hellas many terrible calamities, such as have been and always will be while human nature remains the same, but which are more or less aggravated and differ in character with every new combination of circumstances," and which

<sup>1</sup> (iii. 82.)

are especially accentuated in war. "When troubles had once begun in the cities, those who followed carried the revolutionary spirit further and further, and determined to outdo the report of all who had preceded them by the ingenuity of their enterprises and the atrocity of their revenges. The meaning of words had no longer the same relation to things, but was changed by them as they thought proper. Reckless daring was held to be loyal courage; prudent delay was the excuse of a coward; moderation was the disguise of unmanly weakness; to know everything was to do nothing. Frantic energy was the true quality of a man. . . . He who could outstrip another in a bad action was applauded; and so was he who encouraged to evil one who had no idea of it. The tie of party was stronger than the tie of blood, because a partisan was more ready to dare without asking why."<sup>1</sup>

Thucydides says that "the cause of all these evils," which led to the destruction of Greece, "was the love of power originating in avarice and ambition, and the party-spirit which is engendered by them when men were fairly embarked in a contest. For the leaders on either side used specious names, the one party professing to uphold the constitutional equality of the many, the other the wisdom of an aristocracy, while they

<sup>1</sup> (Jowett's Thucydides, p. 222.)

made the public interests, to which in name they were devoted, in reality their prize. Striving in every way to overcome each other, . . . neither party observed any definite limits, either of justice or public expediency, but both alike made the caprice of the moment their law. Either by the help of an unrighteous sentence, or grasping power with the strong hand, they were eager to satiate the impatience of party-spirit."<sup>1</sup>

Party spirit, or sedition, however, was not the ultimate, but the immediate cause of the disease of the πόλις. The ultimate cause was its lack of unity. The Grecian state, with all the states of ancient times, was founded upon the family and the family idea. First came the family and then its enlargement, the clans, but the clans never extended themselves. The next step was a federation of clans rather than an extension of one or many, and though the clans were afterward broken up, or set aside, by another method of grouping the people, that is, by classification by wealth and ability to fight, caste distinction and caste ideas never disappeared, and the members of a city-state were never regarded as being one great family, naturally or artificially constituted. Hence it was that love and good-will and benevolence of all toward all, and of one toward

<sup>1</sup> (*Id.*, p. 223.)

the many, never came into play and operation. In every city the well-born and the base-born, the rich and the poor, were enemies living side by side, the one coveting wealth, the other seeing his wealth coveted. No religion, no service, no labor united them; there were no ties of blood that were considered to exist between the well-born and the low-born, and labor generally was done by slaves. The poor sought to acquire wealth by despoiling the rich, the rich could defend their property only by their superior knowledge, or by oppressing the poor. Both parties regarded each other with hatred and aversion. There was generally a double conspiracy in every city: one of the poor who conspired from cupidity, and one of the rich who conspired from fear.

Speaking of the numerous seditions in the city-states of Greece Aristotle says that "the main cause of revolutions in Democracies is the intemperate conduct of the demagogues who force the propertied class to combine partly by instituting malicious prosecutions against individuals—for the worst enemies are united by a common fear—and partly by inciting the masses against them as a body."<sup>1</sup> On the other hand, he avers that revolutions in oligarchies generally assume two conspicuous forms, the first is the case, and the most usual one, "where the Oli-

<sup>1</sup> (Politics, Book VIII., Chap. v., p. 355.)

garchs oppress the masses," the second is where seditions arise among the oligarchs themselves.<sup>1</sup>

The cause of the decline and fall of the city-state of Rome was a different one. Rome manifested ever greater elasticity than the city-states of Greece, and extended her rights and privileges first to her plebs, then to the Latin cities around her, then to the cities of Italy, then to her colonies, and at last to all the cities throughout the broad extent of her dominions. It was a long and arduous fight that was waged by the unprivileged for the great right of Roman citizenship; and at one time, when the plebs withdrew to *Mons Sacer*, it looked as if the commonwealth of Rome would be impaired, and her great future prevented; but this danger of dissolution having been overcome by concession and compromise, other like dangers, as they arose, were successively overcome in a like manner, and the great city-state by the Tiber at last seemed as secure on her seven hills, as the hills on the face of the earth. It is true that there arose from time to time in the history and development of Rome, feuds and wars between the privileged and the unprivileged, the high-born and the base-born, the rich and the poor; yet were these contests ever happily terminated; and, though Rome was governed always by an oligarchy or by an em-

<sup>1</sup> (*Id.*, Chap. vi., p. 358.)

peror, the political distinction between citizen and citizen gradually became minimized, and, at last, obliterated, until all stood on the same level before the law. It is one of the strange facts of history that the difference between citizen and subject was so gradually obliterated that no one can tell the date nor the name of the prince who published the decree which granted the right of citizenship to all freemen without distinction. The reason why this decree did not strike the imagination of contemporaries, and was not recorded by historians, is because the change of which it was the logical expression had been accomplished years before. The inequality between citizen and subject, or, as we may say, between the privileged and the unprivileged, had been lessened from generation to generation, until the two had been brought together. Of course, the distinction between the rich and the poor remained, but this seems to have been the only difference that existed between the citizens of the Roman Empire during the last centuries of its life. When Roman citizenship became universal, all the cities of the ancient world had gradually disappeared and the city of Rome alone was left in her broad domain; and this city became so transformed that it was the meeting-place, the union and the tie, for a thousand nationalities, under one imperial sway.

It may be said that the city-state of Rome declined and fell by reason of its own weight, and to a certain extent this is true. It reached the limit of its extension, and then it fell and became something other. But the question arises, why did it reach its limit? why did it not transform itself into something new, into something like our modern national state? Undoubtedly, as I take it, because its citizens had lost the family idea and mode of action. The Gauls, the Spaniards, the Syrians, and the Greeks, did not feel themselves to belong to one and the same family, although they were all Roman citizens. The right of citizenship was a conventional thing, something, indeed, that was established by law and not by natural relationship, nor yet by any spiritual bond. They never, themselves, had any feeling of responsibility for others, nor did they dream of others having a feeling of responsibility for them. They never fulfilled any obligations except those that were made necessary by the invasion of a common enemy, and not always then. The only factor in the world, when the Roman Empire fell, that could have brought into play the idea of brotherhood and the principle of responsibility, was Christianity; but this effect of the teaching of Christ was only dimly perceived, and the leaven of the new life of the world had only just begun to work. But here



we touch upon something that has made possible the modern national state, and that makes mankind to hope for, and to look forward to, the establishment of the world-wide kingdom of Christ, in which the Fatherhood of God shall be acknowledged by a brotherhood of man. I must leave the consideration of Christianity as a factor in the development of the state to another lecture.

## LECTURE III.

### THE MODERN STATE.

THE modern state offers a great many contrasts to the ancient state, but in nothing is the contrast so marked as in the fact that the state is now regarded as having broken with the old-world idea, that religion is the basis of society and government. The civic and ecclesiastic powers are becoming ever more and more separated, and the state, while not considered to be immoral, is often held by recent writers to be *non-moral*, and its many activities and interests as independent of any religious sanction. The Church of England is still the state church, but it is evident that the identification of the church with the state has become a matter of form, and is a survival from the past, and will not long continue in the present. In Russia, it is true, church and state, religion and civic life run along concurrently, but the ideas of state and government in Russia belong rather to the old than the new order of things. We cannot say that religion is looked upon as having nothing to do with law among the states of the West; indeed,

the Christian religion is regarded as the last test of all the laws of the peoples of Christendom. Not that Christianity is part of the law of the land in the sense that courts must take notice of, and base their judgments upon it, but its principles and precepts, as they have become part of the mental furniture of individual judges, have necessarily been infused into thousands of opinions upon which judgments are based.

The idea of the advisability of the separation of the state from the church was many centuries in developing, but since the constitution of the United States has been formed, it has steadily grown in favor, until now it is altogether dominant, and a *terminus ad quem* of most of the socialistic and juristic writers. The sequence of the evolution of the secular idea of the state has been from the theological, or theistical, to the metaphysical, and thence on to the positive stage. And yet we must perceive, when we examine the current theory of the state, that the old notion that religion is the basis of all civic life has not been utterly abandoned; it has, for the most part, been simply shifted. God, or the many gods, or the demi-gods, are not now looked upon as the actual founders and preservers of the state; but for those who believe that man was created in the Divine Image, there is always the fundamental belief that the impulse to social

life and to the formation and development of the state, comes from Him, and that He is therefore concerned with all things pertaining to order and government.

The second thing that marks the contrast between the modern and the ancient state is the idea of sovereignty. It is a difficult task to define just what the modern writers mean by the term "sovereignty." Indeed, I have no hesitation in affirming that if we could understand always what they mean, and that they would agree upon a meaning and a philosophy of the term, we would have a thorough and comprehensive doctrine of the state. Etymologically "sovereign" denoted merely superiority, and hence in a political sense simply monarch, or other superior officer of a state; and its correlative "sovereignty" the power vested in a sovereign. Both terms are comparative, and there is nothing in either of them to imply that the sovereign or supreme power in the state is unlimited and absolute; all that is implied is that the sovereign is superior to the other officers of the state, and his power a superior power to theirs. Hence the terms were originally applied not only to the king or monarch, but to his feudatories, who each were said to be sovereign in his own domains. Afterward the term came to be restricted by the French lawyers to the monarch, from whom it

was transferred to the government and then to the state as distinguished from the government.<sup>1</sup>

But however the conception has grown, we must come to the conclusion that the term sovereignty does not denote a mere collection of powers; it does, indeed, include and necessitate the possession of certain powers, such as, for example, those of taxation, of contracting treaties, maintaining armies and navies, etc.; but its content is not exhausted by an enumeration of these things. It is an entity of itself, an idea, if you will, but one that has in it great power and embodies the highest conception of political life. Whether men to-day believe that sovereignty is absolute and unlimited depends upon the fact whether they consider that the state is all-powerful. Is the state all-powerful, or has it limitations that control it in its very nature? It seems to me that the state is limited, like as all facts or things that we know in the creation of God. Even if we give the state personality and endow it with a supreme will, it does not make it omnipotent and its will irresistible. The will of the state is supreme only within a given sphere. It must be controlled by considerations of justice and reason, as Guizot pointed out, or it ceases to be will and becomes force. If you make will force, you destroy personality. And herein we see the

<sup>1</sup> (The Theory of the State, George H. Smith, p. 43, Note E.)

keen insight and wisdom of Aristotle: "To invest the law then with authority is, it seems, to invest God and intelligence only: to invest a man is to introduce a beast, as desire is something bestial, and even the best of men in authority are liable to be corrupted by anger."<sup>1</sup>

The ancients had no conception of sovereignty such as we moderns have, as the supreme power of the state that exists simply for the life of the state and for the preservation of the rights of the individual citizens. The city-states were absolutely dominant in every way, as they embraced the entire life of men in community, in religion and law, in morals and art, in culture and science. The Romans, indeed, almost grasped the idea of sovereignty in their conception of the term "*imperium*," but "*imperium*" has the thought of command and dominion in it, rather than supremacy and rule; and its correlative is "*imperator*."

The third distinguishing thing that makes the difference between the ancient and the modern state is that the government of the ancient state was unlimited in the exercise of its powers, while that of the modern state is restricted in many ways. It is not correct to say that the ancient states had no constitutions; they certainly had

<sup>1</sup> (Politics, Book III., Chap. xvi., p. 154, Weldon's Translation.)

none as we now understand the term constitution, as the written, and sometimes unwritten, primary laws of organization and government, which are looked upon as possessing more dignity than any other; yet certainly the laws of Moses, of Lycurgus, of Solon, and of the Twelve Tables of Rome, established certain things as fundamental, and as we might properly say, constitutional. Still the state was regarded by the ancients as superior to any law. It was practically omnipotent and had an absolute empire over its members. But it is not so with us; the power or sovereignty of the state is regarded as subject to the constitutional law of the same, and to have no lawful existence apart from it. And the reason for this distinction is not far to seek. Man in ancient times had only the rights of manhood as a citizen. Among the Greeks no distinction was made between public and private law. The Romans separated them in principle, but in fact their private law remained ever dependent upon the will of the state. There was absolutely no recognition of the freedom of the individual as against the state. But to-day man has his rights as man first, and above all other considerations.

Humanity is the point of departure of modern law, and not the state. Private law is ever distinguished from public law, and though it is fostered by the state and often times formulated

and declared by its organs, it is not created by the state. The freeman is not now absorbed into the state. Although it can not be said that he exists apart from it, for no man can live in a stateless condition, the fact is he exists with, and is a part of, the state, and this he is not for its ends, but for his own—that he may be free. He has power to develop himself and to exercise his manhood according to his will, limited only by considerations of the general good or well-being of all the people. It is for these reasons that slavery cannot exist in the modern state. That it has existed, we know, but only as an anomaly and as a survival from ancient times. To-day, as every man has full rights, all men are free, and no man has any property in any other. And hence it is, too, as man is free, that labor is free, and has secured a position of dignity that it never had in the ancient world. And with the freedom of all men and the elevation of labor, has come the endowment of all with political powers. In the ancient state not one-half of its population were citizens. The state to-day rests upon the broad basis of humanity. As a rule, all men within its confines are its citizens; and all adult males, generally, have political powers and the right of suffrage. And this aggregate of humanity stands above all promulgated law in that it has the power to



change it, though, be it observed, it does not stand above the consideration of reason and justice, for these things are integral parts of humanity itself. Men do not exist for the state and government, but the state and government exist for them.

The fourth thing wherein the difference between the ancient and the modern state is manifested is, that in ancient days public authority was directly exercised by its holders, whereas, in the modern state it is exercised vicariously by the representatives of the people. In the ancient republics the citizens appeared in great popular assemblies and passed upon and decided all public matters. In the modern constitutional states the citizens choose from their number certain men to act for them. And yet we must not understand that there were no traces of representative government in the ancient state. The Senate of Rome undoubtedly offered the model of many of our modern representative chambers. It is true that the people did not elect directly to it, but it was made up largely of men who had been elected by them to office and had served acceptably therein. The rise and development of representative government is not hard to trace, for it is a comparatively new thing in the life of mankind. Neither the old village communities nor the city-states knew of it, for they were based upon the

opposite principle of direct and personal participation in the government.

To-day everywhere the representative principle is the prevailing one, as well in the cities and boroughs as in the national and provincial legislatures. Yet there are places where the old principle of direct and personal participation in government prevails, namely in the towns and communal meetings, and in the *referendum* and *plébiscite*. Indeed, one of the tendencies of the present rule of democracy is the return to the old ways as much as possible, for representative government has in it much that is aristocratic, which democracy fears. The origin of the modern representative system has been shown by Professor Adams to be found in the local courts, the assemblies of the second grade, of the early German states. The assemblies of the first grade, the tribal or national councils, acted as direct democracies in the election of kings and chiefs, and in the pronouncing of decisions and judgments. The local hundred and shire courts were presided over by chiefs, it is true, who announced the verdict or judgment, but they derived their validity from the decisions of the assemblies, or, in later times, from those of a number of their body appointed to act for the whole. "These local courts, probably, as has been suggested, because of the comparatively restricted

character of the powers which they possessed, were destined to a long life. On the continent they lasted until the very end of the middle ages, when they were generally overthrown by the introduction of the Roman law, too highly scientific for their simple methods. In England they lasted until they furnished the model and probably the suggestion for a far more important institution—the House of Commons.”<sup>1</sup>

The extension of representative government does not concern us here, as it is a matter of general history ; but it is noteworthy for us who are citizens of the United States, that as representative monarchy developed in England, representative democracy has become fully established in North America. The English colonists of New England and Virginia, and the Dutch of New York, brought from their old homes the love of self-government, liberty and legality. They brought also a faith in the honesty of humanity and a belief that the common and mutual interests of all could be trusted to chosen representatives who should act for all. There is no doubt that the representative assemblies of the colonies arose greatly out of the long distances that existed between the planters and farmers, yet the principle of representation was a part of the

<sup>1</sup> (Civilization During the Middle Ages, George Burton Adams, Chap. v. p. 96.)

common stock of their political knowledge, and was put into effect naturally. It was because this principle was a part of their whole mental make-up that the cry arose so easily of "no taxation without representation." One would suppose, in reading the history of the American Revolution, that this cry was as old as government itself, whereas it was a comparatively new thing among the children of men.

The fifth and last thing that we will notice, wherein the difference between the ancient and the modern state is shown, is, that, whereas the ancient state felt itself to be limited externally only by the power of resistance of other states, the modern state recognizes that there is an international law acting in limiting its dominion, and as a principle of conduct in its relation to other states. International law has become the shield and protection of all the states of western civilization, rejecting imperatively the dominion of one state over any other which does not desire to submit to it. Rome pursued relentlessly the dominion of the world as her natural privilege, and though she made an advance upon the idea of conquest that prevailed in the world before her in the finding of a *jus gentium*, she never looked upon other peoples as having rights of existence as against herself. The idea of the right of conquest was revamped in the beginning of the cen-

tury by Napoleon and the French in Europe, and the Germans have more recently shown a leaning towards it; still the idea of the right of dominion of one state over another and of the making of independent states into dependents and tributaries has faded away among the nations of our western civilization, except in their dealings with the lower races of mankind. And thus it is that we see that although Russia and England and the other European nations may parcel out the moribund Empire of China, and the United States may buy the "sovereignty" of the Philippine Islands, and subjugate their inhabitants with impunity, a Charles the Bold would not be suffered to attack Switzerland to-day, nor a Philip II. the Netherlands. All the great powers would interfere and put down such actions as against the common policy of Europe.

The source or origin of international law is to be found in the *jus gentium* of Rome, which law or body of laws arose out of the fact that ancient Rome was a place of refuge and a centre of activity of the many neighboring peoples, and, as the *jus civile* of Rome could not be applied to any but citizens of that city, there came a necessity for finding some rules and customs that were common to Rome and these outside and foreign peoples. Hence grew the *jus gentium*, or the law that is common to nations. "*Jus gentium*

was, in fact the sum of the common ingredients in the customs of the old Italian tribes, for they were *all the nations* whom the Romans had the means of observing, and who sent successive swarms of immigrants to Roman soil."<sup>1</sup> It is not necessary here to point out how the *jus gentium* under the influence of the Stoic philosophers and jurists became closely identified with the law of nature, nor how the law of nature, in the thought of the schoolmen, became part of the eternal law of God. It was after the *jus gentium* had passed through and had been developed by these ideas that it came into the hands of Grotius and Hobbes, and received a scientific treatment. By these the natural and divine laws were separated, and nature was looked upon as providing rules for the conduct of man, by reason of his very nature. Then by a logical extension, but a mistranslation, *jus gentium* was made to mean the law between nations, and thus a fictitious validity was given it, which went far toward securing its recognition at the hands of sovereign rulers who had already accepted the idea of natural law binding upon men, and of natural rights secured to them by natural law.

It is to be noted that one of the great distinguishing facts that marks the difference between the ancient and modern life of the race is the

<sup>1</sup> (Maine, Ancient Law, Chap. iii., p. 47.)

ever increasing internationality of interests. The principles of international comity and conduct that are generally accepted by all civilized peoples to-day constitute a body of law that is considerable in extent, and that is constantly growing in bulk and importance. States are united now by treaties, not simply for the purposes of military and naval offence and defence, but for the regulation and control of common political and economic interests. In many cases joint administrative organs have been established, and international commissions for the regulation of the navigation of rivers and canals, for the preservation and control of fisheries, and for the proper conduct of postal, telegraph and railway services, are constantly in session. The state undertakes to-day to protect its citizens beyond its own borders, and, with the assistance of friendly powers, to bring back its criminals to justice. And when it fears that justice cannot be had, that is, among barbarous and semi-civilized peoples, it asserts the right of its consular agents to exercise judicial and administrative functions, which right is secured by definite treaties. The Peace Conference summoned by invitation of the Tzar at The Hague, was a great step in advance, taken to bring all the external affairs of the nations under definite rules and to make the international interests of each the in-

terest of all. The plan for arbitration set forth by it gives us an additional reason to look forward to the day to which the noblest minds of Christendom have aspired :

“Till the war drum throbs no longer, and the battle flags are  
furl’d,  
In the Parliament of man, the Federation of the world.”

It seems, when we compare the ancient and the modern ideas of the state, that the differences between them are numerous and decided. In fact, the states of the old and of the new world have so little in common, that they appear to belong to other and different dispensations of Providence. It may be said literally that the one thing in common that they have is human nature, and because of this, and this alone, the arts that Greece developed, the law that Rome perfected, the morality that the Jews strove to attain, are as true and as basal to-day as in the past. Of course, it is understood there has been and there can be, no state without organization, whether definite or indefinite; and for the organization of a state there must have been—there must always be—the three great powers, the judicial, the executive and the legislative, no matter whether they be exercised by the same or by different heads or bodies.

Another thing we must remark when we con-



sider and compare the ancient and the modern state is that, whereas, in ancient times the origins of states are shrouded and obscured by ignorance or mythological tradition, the beginnings of all the states of our western civilization can be traced with absolute certainty. But before we seek to trace the rise of the modern state, let us keep well in mind the difference between a new state and a new government. It is generally proclaimed in these days of rising democracy that a new state can come into existence at any time by and through the will of the people. A national or common feeling, it is said, must exist, but granted that there be a national or common feeling, a national or common will will arise of necessity. This we all perceive; but we perceive something more, that this national or common will is a different thing from the sum of the particular wills of all the citizens; and that it may be something more or something less than the sum of the wills of the majority. And this Rousseau himself recognized. "There is often a great deal of difference between the will of all and the general will. The last has regard only for the common interest; the other for private interest, and is only the sum of particular wills."<sup>1</sup>

How the national or common will comes into existence is the vital question. Rousseau goes on

<sup>1</sup> (*Contrat Social*, Liv. II., Chap. iii.)

to say: "Take from the particular wills the more or less which neutralize themselves, and their remains for the sum of the differences the general will."<sup>1</sup> But this is absurd. The common or general will cannot be ascertained by any mathematical calculation; it must be a unit in itself, otherwise the state has no unity and no personality, and personality is the distinguishing mark of the state in both the scientific and the popular mind.

The true philosophy of the national or common will seems to me to be stated by Dr. Willoughby. "In a political society every human being may be regarded in a double aspect; as an independent individual endowed with freedom of self-determination of action; and as a citizen, or member of the body politic in which he lives. As a citizen he can never be considered apart from the whole, of which he is an integral and inseparable part. Nor, consequently, can his will as such be separated from the General Will. It is in this second capacity that he is related to the State, and contributes by his will to the formation of its sovereign will. And it is upon him in this same capacity that the authority of the State is exercised. He is coerced by the law, not as a free autonomous person, but as a constituent element of the authority that coerces him. He is an integral and inseparable part of

<sup>1</sup> (*Id.*)

the political body, and his will cannot be separated from its will.”<sup>1</sup>

But why a man as a citizen cannot be considered apart from the whole of society in which he lives, and why he is, *ex necessitate*, an “integral and inseparable part” thereof, neither Dr. Willoughby nor any of the modern secular writers seek to discover and set forth. They take us back to the old saying of Aristotle that man is by nature a political animal, and sometimes they lay stress upon the fact which Maine has shown by historical research that originally men lived in families, and in communities that at first resembled families. But this key to their theories they refuse logically to apply. They refuse to see the truth that the social instinct or impulse of man is in the development of the family life, and that a permanent family life is his natural state, for without it there could be no such thing as humanity. How closely the family is interwoven with men’s first ideas of the state is shown by the late Professor Bluntschli in his chapter on the “Family Kingship Among the Greeks and Germans.” He shows that the very name of “king,” among the Germans “*Chun-ing*” or “*Kun-ing*,” comes from “*chun*” or “*chuni*,” family.<sup>2</sup> Yet Bluntschli himself misses

<sup>1</sup> Willoughby, *The Nature of the State*, Chap. vi., p. 125.)

<sup>2</sup> (*The Theory of the State*, Book VI., Chap. viii., p. 362.)

the very point he has made. He says in another place, on "The Relation of the State to the Family:" "Ancients and moderns alike have found in the family the pattern of the State. The State, they say, is an extension of the family, the head of the State being the father, the people his children. This comparison is only true in a limited sense; it only applies to the patriarchal State, not to the higher forms of the State which are based on nationality or humanity."<sup>1</sup>

But "nationality," all writers agree, is a varying and fluctuant term, and some states are not based upon nationality at all, if we use Bluntschli's definition;<sup>2</sup> for example, the states of Switzerland, and of the United States, and the Empire of Austria; and if we use our own generally accepted definition, a nation can exist only subsequent to the state itself.

All states are based upon humanity, but though the state be based upon humanity, it is not humanity in the abstract, for there is no such thing;

<sup>1</sup> (*Id.*, Book II., Chap. xix., p. 195.)

<sup>2</sup> "In English the word 'people,' like the French '*peuple*,' implies the notion of a civilization, which the Germans (like the old Romans in the word '*natio*') express by *Nation*. The political idea is expressed in English by 'Nation,' and in German by *Volk*. Etymology is in favor of German usage, for the word *natio* (from *nasci*) points to birth and race, *Volk* and *populus* rather to the public life of a State (*πόλις*)."  
(*Id.*, Book II., Chap. ii., p. 86.)

nor can it be upon humanity in the individual, else would Hobbes' or Rousseau's theories hold true. No, the state is based upon humanity in families, and it is only a well-organized state as it takes cognizance of this truth. The fact that the tie of the family is marriage does not militate against this, for the result of marriage is brotherhood. Brotherhood is the ideal of every people, of all humanity. The great truth promulgated by St. Paul has been accepted to-day by all mankind, that God "made of one every nation of men for to dwell on all the face of the earth."

That the state has no necessary relation to the soil, as Bluntschli and many others aver, and can exist apart from it, is shown by the fact that the Hebrew state existed while it was yet in the years of its pilgrimage, and so did the Frankish and Burgundian and other Germanic states, while as yet the people had no fixed domiciles. It was the feudal system which made the state to be conterminous with and based upon land. The kings of the Franks became kings of France; but with the destruction of this system the king or emperor of France became king or emperor of the French, and thus the head of the state took his rightful place, not as the lord and master of the land and of its inhabitants, but as the father and protector of the people who happened to live under his authority and rule on the land.

And this same change has been, and is in process of becoming among the other peoples of the world. The king of the upper half of the old Netherlands is not the king of Belgium, but of the Belgians, and there is no king of Greece, but of the Hellenes. It is worthy of remark also in this connection that when the present German Empire was established, the title conferred by the assembled princes at Versailles upon the king of Prussia, was not Emperor of Germany but German Emperor. It is true that the Queen of Great Britain and Ireland is still styled Queen of the land, but every one knows that the term "queen" in Great Britain stands for the term "state," and that her power has passed to the House of Commons, which has, and which exercises, an absolutely paternal power over all the interests and peoples of the realm. One of the most striking things in regard to the state and government of that great empire in these times is the contrast that is offered by observing that one day there will be a bill before Parliament for the protection of a British subject in some far-off island of the Pacific, the next a bill for building some war ships for coast defence, the next a bill for the regulation of the affairs of government of millions of subjects in India.

Again, I desire to draw attention to the fact that the contention that Professor Bluntschli and

his school make, that the state is political and that the family is not, has no bearing upon the matter. He says that the family and the state differ in character, the head of the family is the father whose authority "is essentially a guardianship" (*Vormundschaft*) while "in the nation the different classes have interests apart from those of the prince, their head"; that "the government of the State is political."<sup>1</sup> After all, what do we mean by the term "political"? We know that it comes from the word *πόλις* and that the *πόλις* was the city-state of the Greeks. "Politic" or "politics" is the science that pertains to the order and government of the state and its life and conduct, although, be it observed, it is sometimes held by non-Grecian writers to mean only the last half of this definition, and "*Staatsrecht*" or public law, to mean the first half. "Political" is the adjective of "politic."

We speak to-day generally of Political Science and of Social Science: By Social Science we mean the ascertainment of the laws and customs and usages that govern men in the aggregate, living together and united by mutual interests and relationships. By Political Science we mean the ascertainment of the laws and customs and usages that govern men organized in some form of government or order. The body politic may be de-

<sup>1</sup> (*Id.* Book II., Chap. xix., p. 196.)

finer as the organized social body. But has the family no sociological and political features? I submit that it has. Human society can be said to exist only when the social condition is so far developed that social relations exist, not only objectively as physical facts, but subjectively also in the thought and feeling and purpose of its associated members. It is the subjective fact that differentiates the human from animal communities, that is, the human family from the family of brutes. There is, there must be, a subjective thought, feeling and purpose in every family, otherwise the family, in spite of its objective side, becomes a mere aggregation of accidental physical relationships. Look at the history of the Hebrews; it is not so much the objective side of their life as the subjective that has held, yes, that does hold, that great people together.

But has the family no political side? Certainly. The *gentes* of Rome had, and so has every individual family had that has arisen to greatness since the world began. There is *ex necessitate* an organization in the family life, there is a head, and the father is that head. We must admit, of course, that the family has only an embryonic organization; it is not highly organized like the state, still it will not do to say that it has no trace of the political in it, and therefore that it could not have been the



source of the state and its permanent type and symbol.<sup>1</sup>

The difference between a new state and a new government is not easy to determine, for no principle can be stated that will invariably mark it. We know, for instance, that a new state was made on the North American continent after the war of the colonies with Great Britain, but we are not sure whether the constitution of the Union, adopted in the year 1787, created a new state or a new government for the former Confederation. It is probable that a new state was created, but the question was not settled until at the close of the war of the rebellion, when it was decided that the sovereignty of the different states of the Union never had any existence as against that of the United States. The doctrine of "state sovereignty" has since passed into oblivion. On the other hand, we do know that, when the German Empire was formed in the year 1871, a new state arose into existence out of the unification of the former members of the old Confederation with the South German states. We see also that the men of 1870 and 1871 intended to create a new empire and not to revive

<sup>1</sup> That there was very little family life in the Spartan state does not disturb us ; that state was anomalous, and it never exhibited the best points of a political life ; it was merely a fighting machine.

“the Holy Roman Empire of the German people.” Again, we perceive that new states have arisen, and have passed away, in Italy with each successive generation for many hundred years; but that only new governments have come into existence in Spain since the days of the unity of that kingdom under Ferdinand and Isabella. The question cannot be stated philosophically; it must be looked at historically and a judgment given after all the facts have been taken into consideration. The nearest approach to a principle of determination is the question: has a new sovereignty come into existence out of the union or subjection of older sovereignties, or it may be, out of entirely new elements of political life?

It is impossible for us to picture in a short sketch the rise of all, or of any, of the present states of Christendom. It could be done, though not as easily as that of the State of Watauga, which Mr. Roosevelt<sup>1</sup> has so graphically described. But the making of England and the beginnings of New England have each been drawn by competent and loving hands. What I desire is to study with you, for the remaining time I have, the origin of all the states of our western civilization collectively: To go back, that is, to the breaking up of the Roman Empire and the rise of the so-called mediæval

<sup>1</sup> (The Winning of the West, Vol. I., Chap. vii., p. 184, *et seq.*)

states. The Roman Empire, as you know, embraced within its dominion all of the ancient sources of our political life, the Greeks and the Hebrews, as well as the Romans themselves. These last created an empire that was contemporaneous with the known civilization of the world, that seemed to have within it the elements of eternity. It is not necessary to ascertain the causes which produced the decline and fall of the Empire and of the Romanized states which succeeded it; we are familiar with them all to a greater or less degree; it is sufficient to say that they were social rather than political, for the political power of Rome was undoubtedly better organized and better administered in the later, than in the earlier days of the Empire; nor were there wanting, even to the end, many brave and noble hearts to lead the armies to the defence of the boundaries of Rome. But for the most part the strength of the classical peoples had been sapped by indulgence and excesses, by a profligacy and a wantonness, to which only the pen of a Farrar or of a Sienkiewicz can do justice. Progress ceased in the western world after the time of Constantine, and all the vast energy of the early Romans died. Civilization was brought up to a certain point, but beyond it neither Rome nor the Romanized nations seemed to have been able to carry it. We are not to understand that

there was no chance of recovery for the Roman world; there was a leaven at work which would undoubtedly have regenerated the Western, as it did the Eastern Empire, but the opportunity was not afforded it; I mean, of course, the leaven of Christianity. The Germans, who had been hammering at the gates on the Rhine and Danube ever since the days of the early Cæsars, watching for an unguarded moment to rush in and sack and destroy, now attacked the Empire with greater frequency and boldness, using the very discipline that they had learned in their conflicts with Rome eventually to overcome her power.

The year A. D. 476 is generally fixed as the date that marks the close of ancient history, and the knell of the ancient state. It was in that year that Odoacer extinguished the title and office of Emperor of the West, and assuming the title of Patrician, ruled over Italy, nominally as vicar of the Eastern Emperor, but in reality as a German king. At this time all the provinces of the West were occupied or about to be occupied by Teutonic chieftains, some faintly acknowledging the supremacy of the empire, others repudiating any and all dependence upon it. With the breaking up of the Empire of the West, the east and the west parted company, and the development of our so-called western civilization began. Out of

this civilization have grown the states which we now see in the world. There are no states to-day that were in existence so long an age ago, but there are many which run back and rest upon some of the foundations of those which were then laid. Indeed, all of the modern states of the west have for their beginning the forces and things which were existent when the great universal city-state of antiquity ceased to exist.

What are these forces and things? The elemental ones are four in number: the forms of government and the body of law of the old world-empire; the arts and culture that it had acquired from Greece; the new blood and independent ideas of the invading Germanic peoples; and the inspiring influence and powerful ideals of Christianity. Let me say a word in regard to the first three of these chief forces and things. Of the last, of Christianity as an inspiring influence and impelling power of our modern civilization, I shall speak later on.

Rome, it has often been remarked, was deficient in comparison with Greece, on the intellectual and artistic sides of life. We could not afford to be without the Latin literature, some of it is of the highest order; yet on the whole, the literature of Rome lacks originality and power. And the same thing can be said of Roman art and science and philosophy. All the Romans

who achieved distinction in these departments were students of the Greeks. They annotated, expounded and put in practice the things that the Greeks taught them. The great work of Rome for civilization was political and legal. The world had no conception of an universal civil law until Rome hammered out her magnificent system. It is to be observed that the Romans themselves, in the beginning, had no idea of a civil law which could be useful for others than Romans, that is, patricians; but gradually, through their finding of a *jus gentium*, and the confounding of it with the *jus naturale* of philosophy, their civil law became more and more humane, until at last, by the influence of the *leges*, the edicts of the Prætors, and the philosophy of the Stoics, it grew to be not only the most comprehensive, but the one body of civil law that the world knew. It is remarkable, as Sir Henry Maine observes, that the most celebrated system of jurisprudence known to the world, began and ended with a code.

It is not necessary for us to glance at the laws of Rome, as expressed in the Twelve Decemviral Tables; the statutes of those old days would be of no greater significance than those of any other Latin or Grecian city, were it not for their after development in the expansion of the people and power of Rome. It is the *responsa pruden-*

tium, and the treatises of the great Roman lawyers and jurisconsults, which enlarged and developed the body of the law along the lines, and by the means, which I have already indicated. Some of the results of these *responsa* and commentaries were put into special *leges*, some were embodied in the perpetual edict of the Prætors, and some were to be found only in institutes and treatises for students. For a long number of years the Roman law was in a chaotic condition, as the English common law is now; but finally, under Justinian, the whole body of law, both of civil law and of equity, was reformed, and these two great branches of jurisprudence were fused into one body, the *Corpus Juris Civilis*. It is the *Corpus Juris Civilis* which is the basis of the civil law of Europe to-day. It was the recovery of the Pandects, and the study and application of the rules and principles therein found, in the University of Bologna in the twelfth century, that gave the impetus to the development of law and of the science of jurisprudence and government that made possible the growth and development of the modern states of Europe.

I cannot stop now to point out the fact that it was Rome that taught the world how to govern the world. Full of abuses, indeed, was the Roman imperial system of the government of dio-

ceses and provinces, of cities and parishes, but its system became the system of the church, and its officers the pattern of the officers of the church, and the church was the instructor of the barbaric kingdoms which were erected upon the remnants of the empire. Theodoric continued in operation in the Ostrogothic kingdom of Italy not only the Roman law but the judicial tribunals and the administrative system of Rome. And Clovis, when he founded the kingdom of the Franks, brought the Romans and the Germans together upon equal terms, using the institutions and systems of both as he found one or the other convenient for his government. Charlemagne continued in the same way and established his empire on the old lines, endeavoring to keep both the institutions and the traditions of Rome.

I have spoken of the fact that the arts and culture of Greece were adopted by the Romans, and became the dominant and only form in the civilization of the ancient world. It would take a treatise to show this fully, but it is not necessary; the work of the Greeks in literature and in art is too well understood to need more than a passing notice. Greek thought, it is conceded, lies at the foundation of all modern speculation, and Aristotle and Plato are still revered as the great masters of the educated. All the problems



of life were directly or indirectly attacked by the Greeks, and their varying solutions were formulated before the close of their intellectual activity in many splendid systems of philosophy. These systems of thought of the Greeks furnished the Romans with their philosophical beliefs, and affected deeply the speculative theology of the Christian church; indeed, without them and the finely wrought language of Greece, the Nicene Creed and many Christian dogmas which we now have would not have been formulated, as there would have existed no proper means of expressing them.

The science of the Greeks did not in any way equal their philosophy. Aristotle, it is true, pointed out the right way to knowledge, the way that Lord Bacon afterward showed more clearly; but the Greeks preferred to speculate rather than to investigate. The art and the poetry of Greece, on the other hand, have been as permanent as its philosophy. At no time and under no circumstances have the conception of the beautiful, and the power of the expression of truth and beauty in the world of nature and men, been so great and so marvelous as it was in Athens in the time of Pericles. "In art we may maintain without the smallest fear of contradiction," says Dr. Mahaffy, "that the modern world, with all its inventions, has not even approached the perfection of

this golden age.”<sup>1</sup> The buildings on the Acropolis were certainly the most beautiful and perfect in the world.

And what shall we say of the poetry of Greece, of the epic, lyric and tragic muse, whose songs have never ceased to be heard in the ears of men? The poetry and the art of Greece seem to have had very little to do with the foundation and development of the state. They certainly had no direct bearing upon the political side of man's life, but indirectly they have exercised an immense influence, for they go to make up the sweet and pleasant side of the social life of mankind, out of which, and because of which, the political is so finely organized. As I have already said, Rome had no art and no philosophy and but little culture of her own; she borrowed and adapted those of her more highly gifted neighbor.

Of the third great factor in the building up of the modern state, of the Teutonic peoples, I must speak at greater length. We have ceased to regard the “barbarians who broke down the Empire as constitutional noblemen traveling incognito,”<sup>2</sup> and have grown a little sceptical of the assurance that the German writers so constantly give us that men's first ideas of constitutional freedom arose in the depths of the dark

<sup>1</sup> (A Survey of Greek Civilization, Chap. v., p. 149.)

<sup>2</sup> (Nash, Genesis of the Social Conscience, Chap. vi., p. 185.)

forests of their fatherland, and that they have developed by means of their own inherent strength into the splendid civil liberty of our age. The fact is, as we can observe everywhere, savage and uncivilized peoples are apt to be tenacious of their freedom, and to have many customs and institutions which establish and protect it; it was so in an especial way with the North American Indians; still, we must not ignore that the iron rule of Rome and the almost universal prevalence of slavery had well-nigh extinguished the idea of personal liberty in the ancient world, and that the high Teutonic ideals of personal independence, and of the value of man, as compared with the state, have been of inestimable benefit in the remodeling of society and in the rebuilding of the state and government. Somewhere, at some time, between the ancient days and the present, the thought of the relation of men to the state has become transformed. In ancient days the state was all-in-all, and men existed but for its welfare; to-day man is of the first importance, and the state exists for the good of all. In the philosophy of Rousseau it is said that the state now exists for the benefit of the individual, but as has already been shown, mankind does not live as units, but as members of the family, and in family relations. It will not do to say that the German ideals of freedom wholly produced the

change we have noted. Christianity had an equal; if not a greater, influence in such production. We must say that Christianity and the Germanic ideals worked together to this great end. The feeling was Germanic, the force was Christian.

The great contribution of the Teutonic peoples to the state was the institutions out of which arose the forms of constitutional government. The assemblies of the Roman Republic gradually died away; and, besides, these assemblies were only of a city, and not of a province or of a kingdom, and were never representative in character. The political arrangement of the primitive Germans as drawn by Tacitus, were those of the primitive Greeks as shown by Homer, and were closely allied; but while the classical nations, starting from the same beginning, failed to create enduring free governments and ended in an universal despotism, the Teutonic peoples, or better, the nations which gained an infusion of Teutonic blood, fought their way through an era of absolute monarchy, and passed on to the stage of constitutional government and liberty. The work of Christianity for the state in this great development has been, as I believe, ignored; it will be my purpose to show how much it has done for the state in my next lecture. But one thing of the Germans can be justly said; their institutions

formed the moulds through which the newer and better organization of the state has passed. After all, ideas are old. The Greeks and the Romans had thought out and put into practice in one way or another most of the political notions we now have. What the world needed at the breaking up of the Empire and the influx of the Germans into the then civilized world, was a new motive and some new blood. Christianity furnished the motive, the Germans the blood. Their greatest contribution to the development of the modern state was themselves.

## LECTURE IV.

### THE STATE AND THE CHURCH.

WE have seen in a previous lecture that the ancient state was founded directly upon a religious basis, and that religious rites and ceremonies were ever associated with the laws of the state and with the rules of action of its many different organs. The ancient state had no conception of a dualism between civil and religious life such as we have; it had no idea whatsoever of a church as distinct from the state. Religion, or, perhaps it would be better to say, the religious feeling of the men of antiquity prescribed that the hearth, which they held to be the centre of all worship, should always have a priest. The house had a hearth and a priest, who was always the father of the family. The phratry had a hearth and a priest, who was the phratriarch; and the city had a hearth and it had its supreme priest, who bore the name king. Sometimes they gave other titles to their king. As he was especially the priest of the prytaneum or public hall of the city, the Greeks called him prytanis, and sometimes they called him archon or ruler. Under the different

names of prytanis, archon and king we see a personage who, whatever else his office may have been, was above all the chief of public worship. He kept up the fire, he offered the sacrifice, he pronounced the prayer and he presided at the religious repasts of the community.<sup>1</sup> And so when we find Agamemnon sacrificing for the whole host, we are in no ways surprised, for we know that the kingly and the priestly offices, among the peoples of antiquity were originally one, and that it was only gradually that they became separated, as necessity required, or as certain kingly families became reduced to the ranks of the people, who, losing their rights of ruling, yet retained their rights of sacrificing, possessing the secrets of ceremony and ritual.

In Roman history we find the kingly and the priestly offices combined in Romulus, the founder of the city; and we see them united in the most significant way in Numa, the second ruler, who was more priest than king. It was Numa who established and ordered the religious ceremonies of the growing state. He appointed many to minister in sacred things, such as the pontiffs, who were to see that all things relating to the gods were duly observed by all; the augurs, who taught men the pleasure of the gods concerning

<sup>1</sup> (De Coulanges, *The Ancient City*, Book III., Chap. ix., p. 231.)

things to come; and the flamens, who ministered in the temple. Livy tells us that he did these things because he foresaw that his successors would often have wars to maintain and would not be able to take care of the sacrifices. But whatever was his reason, we see that the Roman priesthood was an emanation from primitive royalty, and we see also why it was that the noblest of the Romans coveted the position of *Pontifex Maximus*, the head of the college of the pontiffs. During the empire the functions of *Pontifex Maximus* were discharged by the emperors, who reserved to themselves the title. It is a curiosity of history that the name survived even the establishment of Christianity as a state religion. After it was dropped by the emperors it was taken up by the popes.

In the distinctively theocratic state of Judah, as I have shown, the priestly and the kingly offices were separated, except in later years under the Maccabean kings. The priestly office was the first to be established and the last to be destroyed; yet, though there was this separation in the offices of the commonwealth of Judah, we must not understand that there was any antagonism between them, such as we see arise between the civil and the priestly powers in the middle ages. There was no secular side to the life of the Jewish people whatsoever; all was sacred,



and the king regarded himself as much the minister of Jehovah as did the High-Priest, each in his own sphere of action. Of course, as we know, differences sometimes arose, but this was when certain kings or certain priests were not true to the Law and the genius of Israel; who were, in fact, apostates from the commonwealth of Jehovah. The status of religion and government in the kingdom of Judah was analogous to that of the church and state in England from the time of the Reformation to our day. The church in England, or as it is termed specifically, "the Church of England as by law established," is older than the kingdom, and the office of the Archbishop of Canterbury antedates that of the king by several centuries; yet his power is not superior to, but rather is it subservient to the royal power, as the power of the Aaronic priesthood became subservient to that of the house of David.

Marcus Varro, whom Cicero calls without any doubt the most learned of the Romans, divided the theology of the classical peoples into three kinds, namely, the mythical, the physical and the civil. He says: "They call that kind *mythical* which the poets chiefly use; *physical*, that which the philosophers use; *civil*, that which the people use."<sup>1</sup> We have not time to dwell upon the

<sup>1</sup> (St. Augustine, The City of God, Book VI., Sec. 5, p. 238, Dods' Translation.)

mythical and the physical, but let us look at the civil theology of Varro. "The third kind," says he, "is that which citizens in cities, and especially the priests, ought to know and to administer. From it is to be known what god each one may suitably worship, what sacred rites and sacrifices each one may suitably perform."<sup>1</sup> And this distinction we must always keep in mind when we think of the religion or religions of Greece and Rome. The poets were continually imagining things about the gods, and most of their imaginings were evil, so evil, indeed, that Plato wanted to banish the poets from his ideal republic. The philosophers were ever trying to find analogies between nature and human reason, which would answer the longings of men's hearts for the divine; some of which findings went far to anticipate the truths revealed by Christ concerning the Godhead. The civil authorities and the priests accepted the traditions of the past and cared for and cultivated the civil rites and ceremonies, which constituted the religion of the state, and were held to preserve its life, and to secure its welfare. It is difficult, of course, to distinguish between these three kinds of theologies, and especially between the mythical and the civil, as St. Augustine himself has so graphically pointed out; but the distinction existed, and was a part of the religious

<sup>1</sup> (*Id.*, p. 240.)

consciousness of the peoples of Greece and Rome; but mark, it was precisely on account of the confusion between the mythical and the civil, that the civil authorities were willing to harbor every new kind of cultus or religion; that Athens set up an altar to the (or an) Unknown God, and that Rome admitted any god to her Pantheon which did not immediately seek to subvert and overthrow the standing of the others.

It would be impossible here to tell the state of religion, or better, the status of the religions of Rome at the time of the founding of the church of Christ. There was the old civil religion which was ordered by Numa and was bound up with the life of the city-state, and there were an hundred different others, some that had come from Greece (though these were similar to the mythical rites that had grown up indigenously in Rome), others that had come from Egypt and the orient, that had no relation or connection whatever with classical thought. The worship of Isis was very popular, but that of Mithra was more so, and even threatened at one time to become a rival of Christianity. And all these different systems of religious belief and worship of the empire were tolerant of one another, all, of course, except the cultus of the Jews, which could not and would not allow that any worship other than that of the one, almighty, self-existent

God, their Jehovah, was right. And it was precisely because of this attitude of the Jews that the devotees of the other gods and goddesses hated them and combined against them and persecuted them without mercy.

Christ came into the world, was born, as we believe, of the Virgin Mary, of the tribe of Judah, of the people of Abraham, and He was, as we know, the supreme religious teacher of the world. Let us first see whether we can find any inevitable antagonism between the teachings of Christ and the traditions of the Jews in regard to the relations of religion and life to one another. Then let us see why the Jewish church opposed its Messiah and crucified Him; and then let us study how an antagonism arose between the religion and church of Christ and the religions and government of the empire.

At the time when Christ came into the world there was a decided breach between state and church among the Jews. The power of government, or, as we may say, the civil authority, was vested in the Emperor and his lieutenants, and the direction of religion, the ecclesiastical authority, was vested in the High-Priest and the Sanhedrim. What did Christ proclaim? A new method of worship? A new form and manner of government? Not precisely. Christ taught that religion is not so much a matter of outward

form and observance, but rather that it has to do with the inner motive of men. Secondly, He showed men whom they were to worship; not a mass of gods and goddesses, mythical, physical and civil, but one, the eternal Godhead; the universal Father, the omnipotent Saviour and the unfailing Sanctifier of all who seek after Him. Thirdly, He pointed out that He, the Saviour of men, had come to establish a kingdom, not of force by force, but of righteousness by righteousness. The ancient pagan religions, we must understand, had nothing whatever to do with the morals of their devotees, strange as it may seem, and all as incomprehensible as it is to us since Christ taught the world.

The pagan religions were simply concerned with securing the favor of this or that god or goddess, or in propitiating this or that one because of some misfortune or mischance that had come upon men or the state. Men resorted to the philosophers for moral teaching and for the precepts which we now hold to be the essential things of religion. It is Christ that taught the world the blessedness of a religious, that is to say, of a moral character. Not that He was the first that taught this great truth, for many of the prophets of Israel had proclaimed what were the essential things of religion, and notably Micah. God "hath showed thee, O man, what is good: and

what doth the Lord require of thee, but to do justly and to love mercy and to walk humbly with thy God.”<sup>1</sup> Yet the Jews, as all the rest of the world of antiquity, laid the chief stress in religion upon rites and ceremonies, endeavoring to keep all the minor ordinances of the law blamelessly, even to the tithing of “mint and anise and cummin,” and neglecting its vital, essential principles. It needed the authoritative teaching of Christ, of one sent from God, to show the Jews, and all mankind as well, that “judgment and mercy and faith” are the weightier matters of religion, and that though ceremonial observances ought to be fulfilled, yet that they, without the weightier matters, are but as chaff before the wind.

But what was the attitude of Christ toward the church and the state? That is the question with which we are now concerned. In the Sermon on the Mount Christ said of Himself, “I came not to destroy” the law or the prophets, “but to fulfil.”<sup>2</sup> And again He said, “Except your righteousness shall exceed *the righteousness* of the scribes and Pharisees, ye shall in no wise enter into the kingdom of heaven.”<sup>3</sup> By these words we understand that Christ’s attitude toward the church was the friendly attitude of a reformer

<sup>1</sup> (vi. 8, R. V.)

<sup>2</sup> (St. Matthew v. 17, R. V.)

<sup>3</sup> (*Id.*, 20, R. V.)

and not the antagonistic attitude of a destroyer. He declared that the moral truths which were embodied in the law, and which had been reiterated again and again by the prophets, should be carried into effect, and He showed that righteousness consists in such observance and not in the observance of ceremonies great and small. And again, Christ said, "The scribes and the Pharisees sits on Moses' seat: all things therefore whatsoever they bid you, *these* do and observe; but do not ye after their works."<sup>1</sup> Here is no intention to push these teachers of morality from their stools, but rather is there a commendation of their teachings, but not of their actions.

But what was the attitude of Christ toward the priesthood of Israel, toward, that is, the organized church? It was undoubtedly antagonistic. There was certainly a manifest intention to set it aside. We see this first negatively, and then positively. We see this negatively in that Christ never commended the priesthood, nor suggested that there was any further use for it. Positively, in that Christ proclaimed at the outset of His preaching, the fact that St. John Baptist had previously announced, that "the time is fulfilled and the kingdom of God is at hand."<sup>2</sup> The sway of the kingdom of God could not be otherwise

<sup>1</sup> (St. Matthew xxiii. 2, 3, R. V.)

<sup>2</sup> (St. Mark i. 15, R. V.)

than subversive of the rule of the high priests, and the enmity of Annas and Caiaphas and their followers to Jesus, after they had refused to accept Him as their Messiah, was natural. Just how Christ would have changed the religious polity of the Jews, in such a case, we cannot imagine; but we must believe that the two great Christian ordinances of Baptism and the Lord's Supper would have been instituted, and that the rite of circumcision and the bloody sacrifices would have been set aside; and probably He would have chosen twelve chief pastors or judges to have governed the new kingdom of Israel, like as He chose twelve apostles and sent them forth, under different conditions, to bring the kingdoms of the world into the church of God. But the priests and rulers did not accept Jesus as their Messiah, and it is a vain thing to speculate upon what would have occurred if they had so done. What we must perceive is that Christ intended to, and that He did, set aside the whole religious polity of Israel, and that He substituted another in its place; but that religious, that is, moral laws, commandments and precepts were in no wise changed or altered, rather that they found a fulfilment in His teachings and in His great example.

The polity that Christ substituted in the place of the old polity of Israel is the kingdom of God.



But what is the kingdom, or as we may say, the city, or the church of God? Christ speaks constantly in His discourses of His kingdom, and He says that He is its King, notably when questioned by Pontius Pilate in regard to His royal character. But He does not tell us exactly what His kingdom is, or in what it consists. He simply says, "My kingdom is not of this world." "To this end have I been born, and to this end am I come into the world, that I should bear witness unto the truth."<sup>1</sup> He allows us to infer that the kingdom of God is a kingdom or dominion founded upon truth, and that truth has its origin and centre of influence, not in the hearts of men, but in the bosom of God. At another time He says, "I am the truth."<sup>2</sup> He who is the truth is the King of the kingdom of God. But what was the attitude of Christ toward the state, or as we may better say, toward the civil authority? It was certainly friendly. We see this both in His answer to the Pharisees and Herodians at the time when they asked Him whether it were lawful to give tribute unto Cæsar or not<sup>3</sup> and also in His demeanor when brought before the judgment seat of Cæsar's representative the morning of His iniquitous trial and crucifixion.<sup>4</sup> It was undoubtedly Christ's words "to render unto Cæsar the

<sup>1</sup> (St. John xviii. 36, 37, R. V.)      <sup>2</sup> (St. John xiv. 6.)

<sup>3</sup> (St. Matthew xxii. 21.)      <sup>4</sup> (St. John xviii. 33., *et seq.*)

things that are Cæsar's " and His subsequent submission to the civil authority, that prompted the Apostle of the Gentiles, when writing to the converts to Christ in Rome, to say, " let every soul be in subjection to the higher powers : for there is no power but of God ; and the *powers* that be are ordained of God." <sup>1</sup> And this was the exact attitude of the church for centuries after it had been established by Christ, and had gone forth to bring the world into subjection to Him. The state was not to be overthrown by the church, nor were the members of the church to refuse it obedience, except when its laws interfered with the dictates of conscience, and sought to compel the doing of things that were repugnant to the teachings of Christ. Order is the first rule of God, in heaven and in earth, and the church was not antagonistic to order ; it sought not to subvert it but always to uphold it. " Render " therefore, says the apostle, " to all their dues : tribute to whom tribute *is due* ; custom to whom custom ; fear to whom fear ; honor to whom honor." <sup>2</sup>

The things to which the Christian Church was antagonistic were the polytheism of the ancient world, and its evil ways of living. The question now arises, why was it then that the Empire was, in the beginning, so fearful of the church and so

<sup>1</sup> (Romans xiii. 1, R. v.)

<sup>2</sup> (*Id.*, v. 7.)

determined to stamp out the sect of the Nazarenes? Certainly not because Christianity was antagonistic to the civil authority; no, but because it seemed to be. We must remember that there was no difference between church and state in the ancient world. Religion, anyway civil religion, and civil authority, were one and the same thing. Christianity was necessarily antagonistic to the civil religion and seemed to be, therefore, to the civil authority, and "the powers that be" believed that it ought to be put down as subversive of the one and the other. There were minor reasons also, but we need not dwell upon them. One was the strange and wicked misrepresentation of the worship of Christ that floated about among the ignorant, and another the fact that His doctrines, when they became known, reflected upon the ways of living of the classical peoples, and enraged those who would not be converted from their evil doings.

It is not necessary to speak of the reasons why the church of Christ grew; what we are concerned with now is the fact that the church did grow, like the famous grain of mustard seed spoken of by its founder, and became in three short centuries the greatest institution of the world, except the world-wide empire itself. I speak of the church as an institution; and thus

we must regard it. It was an institution of which Christ laid the foundation, and a wholly new thing, one the like of which the world had never known or dreamed of before. The fact that Christ intended to found a new institution is plainly seen in more than one passage of the gospels. We see it in His words to Nicodemus: "except a man be born anew, he cannot see the kingdom of God;"<sup>1</sup> in those to Peter, "upon this rock" (the confession of faith in Him as Christ) "I will build my church;"<sup>2</sup> in those to Pilate, "My kingdom is not of this world;" (that is, not founded upon the things of this world) but My rule is that of a ruler which necessitates My having a kingdom.<sup>3</sup> But more especially do we see it in His acts; in His setting apart of the twelve apostles and of the other seventy; in the establishment of the sacraments of Baptism and of the Lord's Supper; in His great commission to His apostles to go into the world, to make disciples of all nations, baptizing them in the holy Name.

But the main question is, did our Lord intend to found a visible or an invisible kingdom, for it is admitted generally that He did establish a church. It is impossible to go into the argument with any degree of fulness, nor is it necessary. "It is evident unto all men, diligently reading

<sup>1</sup> (St. John iii. 3, R. V.)

<sup>2</sup> (St. Matthew xvi. 18, R. V.)

<sup>3</sup> (St. John xviii. 36, *et seq.* R. V.)

Holy Scripture and ancient Authors, that from the Apostles' time there have been these Orders of Ministers in Christ's Church,—Bishops, Priests and Deacons.”<sup>1</sup> It is evident again that, as we watch the history of the development of Christian thought, we discover a great number of religious bodies all owing their existence and their purpose to Christian belief and Christian ideas, yet “in the midst of these we discern also something incomparably more permanent and more universal—one great continuous body—the Catholic Church. There it is; none can overlook its visible existence, let us say from the time when Christianity emerges out of the gloom of the sub-apostolic age down to the period of the Reformation.”<sup>2</sup> It is evident, also, that these bishops, priests and deacons, the ministry of the more permanent, Catholic Church, were from the beginning a highly organized and finely articulated body, visible to the eyes of all who cared to see them, preaching the invisible Word, but ministering the visible sacraments. Besides all which, there is a natural argument in favor of a visible church. As all the social and political ideas of men are preserved in life and put into effect in the common and universal organ of society which we call the state, so we conclude that all the

<sup>1</sup> (Preface to the Ordinal in the Book of Common Prayer.)

<sup>2</sup> (Gore, *The Church and the Ministry*, Chap. i., p. 11.)

moral and spiritual ideas which are the offspring of Christianity should be preserved in life and put into effect in some organization, and this organization we perceive to be the church. It is worthy of remark in this connection that one of the five secondary causes given by Gibbon, by means of which the Christian faith obtained its remarkable victory over the established religions of the earth (the chief cause being the truth of the doctrine itself and the ruling providence of its Author), was "the union and discipline of the Christian republic, which gradually formed an independent and increasing state in the heart of the Roman Empire."<sup>1</sup> And this union and discipline we perceive displayed from the very first days of the church in the Book of the Acts of the Apostles, and in the pastoral epistles of St. Paul.

It was this strongly uniformed and disciplined republic or church that Constantine found flourishing in the Roman Empire at the time of his accession to power, a society acknowledging the supremacy of the civil authority in regard to all things that made for the outward order of the state, but repudiating it in regard to those things that concerned conscience and the inner life. It does not represent the truth to say, with St. Au-

<sup>1</sup> (The Decline and Fall of the Roman Empire, Vol. II., Chap. xv., p. 264.)

gustine, that the world was then, as it had been from the time of the expulsion of man from Paradise, divided into two great contrasting and antagonistic cities—the city of man and the city of God. It is impossible to stigmatize the mode of the life of the empire as wholly evil; it contained many things that were absolutely good, and many more that were relatively so. There were some principles of the civil law which were quite as humane as some of the doctrines of Christianity. And the social spirit of the Romans, which led them to discern a *jus gentium*, and to extend the citizenship of Rome to all the civilized world, has never been surpassed by any people, ancient or modern, and it is scarcely equaled by the nations of the present age. The difficulty lay in the mixture of the good with the bad, and the lack of any fixed and definite standard to determine the bad. One cannot read St. Augustine's great work, however, without seeing that there has always existed a contrast, in the world of men, between those who have sought for righteousness, and those who have sought for the gratification of self, and that those whose minds have been set upon righteousness have been, for the most part, the people, or peoples, who have believed in one, eternal and immutable God; and that those whose minds have been set on mundane affairs have been gen-

erally those who have believed in lords many and gods many. "The City of God" is undoubtedly the first effort of the human intellect to set forth a philosophy of history, and most splendidly was the task performed. The Christian world has almost universally taken the distinction drawn by the great Bishop of Hippo to be true, that all things in the earthly city are evil, and that all things in the heavenly are good. They have forgotten that the saint himself has a long account of the civic virtues of the ancient Romans, which obtained for them the merits and aid of the one true God, because of which He enlarged their borders.<sup>1</sup> And they have forgotten likewise the words of Christ Himself, that the church is made up, like the world itself, of the good and the bad, the wheat and the tares.<sup>2</sup>

That the church was far superior to the world when Constantine came into power (A. D. 306) in all the great moral and spiritual virtues, we know; indeed, it is probable that never was the contrast so marked as it was at that time between the "heavenly" and the "earthly" city. It is futile to discuss the exact motive of Constantine in making the religion of Christ a lawful religion and in taking the church under his protection. It is probable that he had been trained in the

<sup>1</sup> (The City of God, Book V., Sec. 12, p. 198, *et seq.*)

<sup>2</sup> (St. Matthew xiii. 24.)



faith of his father, which was an eclectic system founded on a belief in the one supreme God, and that during the years of his youth, which were spent as a hostage in the court of Diocletian he had seen with aversion the deceits and machinations practiced by the pagan priesthods upon that misguided man.<sup>1</sup> But it is evident that his motives had less relation to his religious convictions or opinions, than to the fact that the Christian Church was a well-organized and disciplined body, and would give him a firm support in his struggle for the empire. Gibbon speaks of the motives of Constantine's conversion as being "variously deduced from benevolence, from polity, from conviction, or from remorse."<sup>2</sup> And it is probable that all of these feelings entered into the heart and mind of the emperor at some time in his career; but when, hailed by the legions in Britain as his father's successor, he extended the toleration of Constantius to the Christians, it would seem that he was influenced primarily by political considerations.

It would be interesting, here, to examine the story of the vision of the cross, as related by Eusebius and other ecclesiastical writers, but it

<sup>1</sup> (Robertson, *The Christian Church*, Vol. I., Book II., Chap. i., p. 254.)

<sup>2</sup> (*The Decline and Fall of the Roman Empire*, Vol. II., Chap. xvi., p. 469.)

has little relation to our subject. It is evident that some remarkable omen happened to Constantine as he was on his march against Maxentius; whether it was a vision or a hallucination, the result of the excitement of his mind, we cannot tell, for some such thing only can account for the *labarum*—a banner made up of Christian symbols, under which his armies marched to victory, and for the statue of himself which he afterward erected in Rome, in which he held a cross in his right hand and under which there was an inscription, attributing his success to the power of that saving sign. Our query is, what was the position of the church after Constantine became identified with Christianity and had made it the dominant religion of the empire? In the ancient world, as we have seen, religion and government, or church and state, were one and the same thing, and so they remained from century to century in theory and generally in fact, until the time of Constantine. And even after his accession, the old civil religion formed part of the state. The emperor was the *Pontifex Maximus*, and as such he took part in heathen ceremonies, regarding them as attached to his imperial functions.

But what was the status of the Christian church? The church was an organization separate and distinct from the state. Whatever may have been the desire of Constantine, as he became

more and more convinced of the truths of Christianity, of making the church one with the state, it was during his reign, and it remained for years after his decease, as Gibbon puts it, a republic or state within the state. It had itself become convinced of the fact that it had a peculiar spiritual foundation and a separate spiritual existence, and it could not regard itself as a state institution, or as part of the state. A new idea had grown up with it in history, that the whole religious life of the community, although not withdrawn from the care and influence of the state, was yet essentially independent of it. A marked dualism between church and state was inevitably seen, and the state became limited and circumscribed in its sphere of conduct and action. It became now only a community of law and politics, and no longer also of religion and worship.<sup>1</sup> And this, as I take it, is the most significant fact in the history of western civilization.

The history of the relation between church and state from the time of Constantine to Charlemagne is very difficult to trace; and the reasons are manifest. This period is the time of stress and storm, of fever and unrest, of modification and adjustment, of the breaking up of the old order and the establishment of the new. For

<sup>1</sup> (Bluntschli, *The Theory of the State*, Book I., Chap. iv., p. 41.)

a while the empire seemed to hold its own against the uncouth peoples of the north, but gradually the strength of the giant ebbed away, and the eternal city became the prey of the barbarians. It was the withdrawal of the seat of government from Rome to Constantinople that gave the bishop of that city his great and wonderful opportunity, which led inevitably to the establishment of the papacy. The head of the state, if he had remained in Rome, could easily have kept the head of the church in the second place; but no exarch of the emperor, with his seat of government at Ravenna, was able to maintain priority over the bishop, especially when he had become the first citizen of the city, and all the peoples of the empire still called themselves "Romans." And if no exarch of the emperor of the East could maintain the rights of the empire over the bishop, much less could the kings of the invading barbarous tribes. Odoacer and Theodoric never indeed seemed to desire to subject the bishop to their will. They rarely resided in Rome, and Theodoric left it to be governed immediately by two consuls, the one appointed by the eastern monarch, the other by himself.

After the Lombard conquest of Italy, the political control of the eastern emperor over the city of Rome and its bishop became hardly more than nominal. The Exarch of Ravenna was in

name the representative of the emperor, but he could do nothing to help Rome in its struggle for life with the terrible enemy, and the conduct of the defence, and even of the political administration of the city, soon passed into the hands of the bishop. In this way there was gradually added to the general ecclesiastical power which was accruing to him, the internal independent political government of a state. This incipient temporal power was gradually extended by Gregory I. (A. D. 590) and made firm and secure. Gregory the Great was born of a family of senatorial rank and had attained, in his early manhood, to the office of prætor of Rome. At thirty-five he abandoned his worldly pursuits and entered upon a monastic life. At the death of Pope Pelagius II. he was chosen by the senate, the clergy and the people, to fill the vacant chair. It would be difficult to narrate all the affairs which occupied the time and attention of this splendid pope. It is sufficient to say that he set apart and commissioned civil and military, as well as ecclesiastical offices; that he made peace independently of the empire, and that he generally took charge of all the affairs, little and big, of the Roman people. Another event, the sack of Rome by Alaric, had aided the growth of the power of its bishop. The aristocratic society of the city, with the usual conservatism of an aristocracy,

has remained pagan. Alaric largely spared the Christians, and scattered and destroyed the pagan society, leaving the bishop and his clergy without social, as they had been without official, rivals. And still another thing contributed to this same end: the orthodox character of the bishops of Rome, and the appeals which the catholic bishops made to them in their controversy with the Arian heretics. The Council of Sardica directly authorized this thing, and decreed a limited right of appeal to Julius, at that time bishop of Rome.<sup>1</sup>

But the most important cause for the advancement of the papacy was the dissolution of the western empire itself, and the establishment of the dominion of the Franks. This alliance, for though there was no open agreement, it was in truth a combination and alliance that was entered into between the Frankish rulers and the popes of Rome, was the most important ever made in the history of the world. By it the great and holy see of Rome became emancipated from all allegiance to the emperors of the East and entered on the splendid rôle it afterward played so fearlessly—the rôle of arbiter of kings and supreme ruler over the peoples of the western world. And by it, it received immediately the

<sup>1</sup> (Can. 3, Hefele's *Hist. Councils of the Church*, Vol. II., p. 112.)

territory that had belonged to the exarchate of northern Italy, which gradually grew into the States of the Church, and which, making the pope a temporal, as well as a spiritual monarch, enabled him the easier to enter into the political life of Europe. What the Frankish rulers received was very little in fact, though it appeared very much; they were granted, first, the title of Patrician of Rome, and then, in the person of Charlemagne, they were raised to the exalted rank of Augustus and Emperor of the Western Roman Empire.

The coronation of Charles the Great is the central point of the middle ages, and a factor in the development of European civilization which has not yet spent its force. It is one of the few great events of history, that is, one that has permanently changed the mode and form of the development of mankind.<sup>1</sup> In the day when Charles was crowned, as indeed throughout all the middle ages of the history of Europe, two great antagonistic forces were striving for the mastery in the world of politics, the force that makes for separation and the force that makes for unity. The force that made for separation found its mediate outcome in feudalism, the force that made for unity found its immediate exposition in the kingdom of Charles. It is true that feudalism

<sup>1</sup> (Bryce, *The Holy Roman Empire*, Chap. v., p. 50.)

arose eventually out of the fragments of the Carolingian Empire, but behind the sovereign feudatories and the free cities of western Europe there loomed up ever the fact that they all had their root in an empire that had been almost universal, and which in its turn found its historical basis in the old dominion of Rome. Feudalism had many abuses, and we are well rid of it, but we cannot but perceive when we study the conditions of life in mediæval days that it was a necessity in the times of ignorance and disorder that came upon Christendom after the death of Charles, for it was the system by which the individualism of the barbaric princes and their fierce descendants was curbed and controlled, and the probable outcome of the force that made for separation prevented. It was feudalism that stood in the way of absolute anarchy. And this institution, the medium through which the Christian nations have come from savagery to civilization, would not have been possible but for the empire of Charles; although, be it observed, Charles did not have it in mind. It was the institution of feudalism also that the papacy made use of, when, after the decline of the empire of the Franks, it came forward to offer to the world another basis of unity, the church of God.

But out of this alliance between the Franks



and the church two dangers immediately arose, a danger to the church and a danger to the state. The danger was similar to both, and was either that the state should absorb the church, or the church the state. And first the danger came to the church. At several times in the history of the East the empire threatened to make the church a part of itself, like as was the old civic religion of Rome. Indeed it did so under some of the early emperors; even as it has so done under the later Tzars. The Carlovingian state threatened to do the same thing; and we must believe that it was only the strongly organized institution of the Holy Roman Church, governed by one single and supreme head, which rescued Christendom from this fate. The extent of the effort of Charles the Great to absorb the church in his state is seen in his Capitularies, and the rank and authority he bestowed upon the bishops and other ecclesiastics in his wide domain. It is seen also in the fact that he himself summoned synods and revised the canons proposed by them, and gave them their validity. The Capitularies of Charles are both intricate and numerous, and they touch upon every conceivable subject, both in the religious and in the civil life of the many peoples under his sway. In them matters of church and state are mixed up inextricably. They have all been examined and classified,

though not, as I understand, with the care that they deserve. They contain according to the analytical table prepared by Guizot,<sup>1</sup> eleven hundred and fifty articles, of which eighty refer to moral legislation, two hundred and seventy-three to politics, one hundred and thirty to penal, one hundred and ten to civil, eighty-five to religious, three hundred and nine to canonical, seventy-three to domestic and twelve to occasional subjects, a heterogeneous mass of matter which would now by common consent be divided between church and state without question or debate. That the church was not absorbed into the state under the rule of the Carlovingians arose also out of the fact that the descendants of Charles had not the strength of mind and body that distinguished that great monarch, and the division that Lewis the Pious, the son and heir of Charles, made of the empire among his sons. If the empire had remained united in one strong hand, it might have been able to make the church a part of itself. And if not, it would certainly have had the power to resist the danger which afterward threatened it of being engulfed by the church.

The effort of the church to absorb the state is the most remarkable phenomenon in the history

<sup>1</sup> (History of Civilization in France, Vol. III., Twenty-first Lecture.)

of Europe. It seems incredible that the institution of the gentle and mild-mannered Jesus, in a few hundred years, should become not only the dominant but the dominating power of the world. Why was it? Some of the causes for the rise of the papacy I have briefly touched upon; but there were many others, and the chief among them was the force of an idea. The Roman dominion gave the world a common language and a common law, and united the nations by these strong ties together in an empire of internal peace that was most desired and desirable. When the old empire of Rome was divided and broken; and again, when the new empire of the Carlovingsians declined and fell away, men who had learned to love a unity of life and who believed that disunion meant a return to barbarism, turned their eyes ever more and more to the great successor of the emperors at Rome, the pope. The pope, again, placed before them an institution in which they could find as firm a basis of unity as the empire had offered, the Roman or catholic church. Indeed, this unity which the church represented was a higher and nobler thing than that of the empire, for it was based upon humanity and not on law; on love, and not on force. No wonder, then, that the church was so passionately revered. The power of ideas in the middle ages was enormous in

every way and can scarcely be realized by us today. We can see this especially in the Crusades. Not the gift of Charlemagne, not the position of the first see in Christendom, not the fact, true or supposed, that the pope's chair was St. Peter's, not all the fortuitous circumstances which favored the rule of the bishop of Rome, yes, not even the false and favorable decretals, can account for the tremendous growth and strength of the papacy. They arose out of the idea that the Roman empire which had gathered all the known peoples of the earth within its folds, was eternal, and that the quality of eternity had passed by right divine to the Church of Christ, and with it the rule of the world. It is true that this idea was somewhat long in coming to maturity. We find but few traces of it until after the Carlovin gian rulers had passed away; yet these were the periods of uncertainty and dissension; men were not quite sure which was the rightful successor to the old Roman power, the Kaiser or the Pope.

It is from the coronation of Otto the Great (A. D. 962) that a new era begins, a new phase for the Holy Roman Empire and for the Holy Roman Church. Now it is that the ideas that had been floating in men's minds took shape, and we see the relations of the emperor and the pope presented under the figure of the body and the soul. "The Pope, as God's vicar in matters spir-

itual, is to lead men to eternal life; the Emperor, as vicar in matters temporal, must so control them in their dealings with one another that they may be able to pursue undisturbed the spiritual life, and thereby attain the same supreme and common end of everlasting happiness.”<sup>1</sup> At the outset the church and the empire worked together harmoniously enough, but gradually the church asserted that as the soul’s interests are superior to those of the body, so the interests of the pope, and consequently his power, are superior to those of the emperor, and the emperor ceased to be the vicar of God in things temporal and became the vicar of the pope. And so it came about naturally that the great fathers of the church of the middle age declared that the pope was the sole representative of God on the earth, and they came to the conclusion that church and state were as two swords which God had given to Christendom for its protection, that both of them, however, were given by Him to the pope, and the temporal sword was by him handed to the rulers of the states.

In view of such notions it is easy to understand how the papal pretensions grew. We perceive that the claim of Gregory VII. (A. D. 1073) to an absolute supremacy over the whole Christian and pagan world was a logical necessity. Such a

<sup>1</sup> (Bryce, *The Holy Roman Empire*, Chap. vii., p. 105.)

claim was the inevitable outcome of such ideas. Look one moment at the acts of this imperious man. The kings of the growing Spanish states are reminded that territory conquered from the infidel belongs of right to the pope as vassal territory. The king of Munster in Ireland is informed that all sovereigns are subjects of St. Peter, and that all the world owes obedience to him and to his successor. The fealty of England is demanded from William the Conqueror. Imperious letters are written to the kings of France. Political affairs are even noticed in Russia. And the triumph of Hildebrand over the Emperor Henry IV., at Canosa, is the most significant as well as the most dramatic incident in the history of the papacy. It is true that many of these claims and most of this conduct are founded upon the so-called donation of Constantine of the west to Bishop Sylvester, which the mediæval world generally believed; but the donation, or the belief in it, would have been of no avail except for the belief in the idea that has been previously set forth that a world-wide empire was a most desirable thing, and that the pope was logically its ruler, both as inheritor of the Roman power and as chief bishop in the catholic church. The Holy Roman Empire of the German People, especially after the rise of the kingdoms of Spain, France and England, was perceived to be a

limited and contracted thing, and the emperor "a king of shreds and patches" rather than a strong and powerful ruler. When John, King of England, knelt before the Roman legate Pandulf, and surrendered his kingdom to the Roman See, taking it back as a tributary vassal, it was believed in after times that all England thrilled at the news with a sense of national shame and humiliation. But "we see," says Green<sup>1</sup> "little trace of such a feeling in the contemporary accounts of the time. All seem rather to have regarded it as a complete settlement of the difficulties in which the king and the kingdom were involved."

It is foreign to our study to enter upon the history of the struggle between the church and the empire and the kingdoms of Christendom. Everywhere it went on, and for a while, it looked as if the civil authority would be utterly submerged. The outcome can best be seen as we study the range of the theory so strenuously maintained by Pope Innocent III., called the Theory of the Translation of the Empire. Innocent alleged that the empire was taken from the Greeks and given to the Germans in the person of Charles by Pope Leo III. as God's representative, and that what Leo gave could by his

<sup>1</sup> (Hist. of the English People, Vol. I., Book III., Chap. i., p. 236.)

successor be taken away and bestowed upon another. It is probable that the consciousness of nationality, which gradually grew into life after the decline of feudalism, and the patriotic feelings that flowed from it, would have been strong enough to have modified, if not to have destroyed the claim of the papal church to universal dominion, even if no ecclesiastical scandals had arisen, and no fiery reformers had appeared to question the rule of the popes. As it was, this consciousness was undoubtedly the greatest factor in the period of the reformation, and did most to make it effective. The idea of the necessary unity of the western world never quite took root in the British Isles; they were the last countries incorporated in, and the first released from, the Roman Empire; and even in those countries where it had taken root, it gradually faded away, as distinct languages were formed and customary laws hardened into legal systems; and soon there arose the conviction that each people was sufficient unto itself, and that it ought to have, and ought to govern, its own distinctive church. This new idea did not by any means become universal even after the Reformation had become an accomplished fact, that is, after the Treaty of Westphalia had been signed (A. D. 1648), because many nations remained Roman in form, and in many that became Protestant,



masses of the people continued to be attached to the old Roman church and ideas.

The new way of looking at things is best seen in England, where the church became distinctively one with the nation (A. D. 1529) and conterminous with it, governed for the most part by its parliament and subject to the same head as the state. The theory that the church and state are one and the same society contemplated from two different aspects, and that the Christian state has a perfect right to legislate for the church, is most fully set forth by Richard Hooker in his celebrated treatise on the Laws of Ecclesiastical Polity.<sup>1</sup> Hooker, it is to be remarked, is not so extreme in his views of the duty of the state to religion and the church as was the late Mr. Gladstone. Hooker regarded the state and the church as naturally existing historical facts in the order of Christendom, of which one is providentially the complement of the other, while Mr. Gladstone sought to prove that the state ought to establish and endow a religion, and more particularly that England ought to maintain the establishment of Christianity and the endowment of the English Church.<sup>2</sup> But we need not stop to study Mr.

<sup>1</sup>(Book VIII., Chap. i. 2, and Chap. vi. 8, Keble's Ed.)

<sup>2</sup>(The State in its Relations with the Church, Vol. I., Chap. ii., Part I., 87 and 97-99. And see also Vol. II., Chap. vi., Sec. 1.)

Gladstone's theories. They have been critically examined, and as it seems to me, demolished by Lord Macaulay in his essay on "Gladstone on Church and State."<sup>1</sup>

We find Hooker's ideas more or less prevalent in other countries in his age; in Protestant Germany, Denmark and Sweden, in the united Provinces of Netherlands, and in the republic of Geneva. Church and state became for the most part one and the same society, which society is termed a commonwealth as it lives under the form of secular law and government; a church as it has the spiritual law of Jesus Christ. Religion was, and is, still taught in the schools, and provision was, and is still, made by the different civil governments for the support of the ministers of the church. Spain, we know, has remained under the dominion of the pope, though ever in a less and less degree, until it can now be said that his authority is recognized only in religious matters. The Spanish-American republics, though Roman Catholic in form, are decidedly hostile to the claims of the papacy. France has alternated with her rulers; sometimes she has submitted to the pope, sometimes she has set his authority aside, and sometimes she has made agreements, concordats, limiting it in some cases, and agreeing to acknowledge it in others; but

<sup>1</sup> (Macaulay's Essays, Vol. II., p. 107, Trevelyan's Ed.)

during all the time the idea of a Gallican church for the Gallic people has grown. Some day, perhaps, we shall see it *un fait accompli*, or it may be we shall see adopted in France by the consent of all, the American idea of the entire separation of church and state, that is, the abandonment by the state of all interference with religion, and the relinquishment by the church of all subsidies to her ministers and teachers. It seems to me that this will be the only solution of the vexatious war that has been carried on between the clericals and the anti-clericals since the overthrow of the Second Empire.

And this can be the only solution of the many difficulties that have sprung up in church and state in England. The various controversies that have lately arisen seem difficult to understand, and they are difficult to understand in detail, but when we remember that Parliament, which has full power of legislating for the church, is to-day made up not of churchmen nor yet necessarily of Christians, but of Anglicans, Non-conformists, Roman Catholics, Jews and infidels, we perceive the crux of the whole matter. In Reformation times it was far different. Then Parliament was an assembly of churchmen whose title to speak in church matters was the same as a lay House of Convocation; but what churchman will listen to the voice of Parliament as at

present constituted, or give adherence to the decisions of the civil courts erected by it, the judges of which may be nominated by men who are inimical to the church, or it may be to religion itself? On the other hand, the decisions that have been rendered by the Archbishops of Canterbury and their Assessors are not decisions in the sense of judgments that must be followed, rather are they counsels of advice. How are these controversies, then, to be decided? Some recommend the disestablishment and the disendowment of the church, some the creation of new state courts with new and extraordinary powers, some again the endowment of ecclesiastical courts with the whole power of the state. Without making any attempt to discuss the ways suggested of solving the question, it seems to me that the drift is inevitably toward disestablishment, and to this end there works not only the change that we see in the status of Parliament and therefore of its relation to the church, but the change that has taken place in regard to the royal supremacy. In theory still the sovereign, as God's vice-regent on earth, is the supreme governor of the church, but in fact and in practice the ecclesiastical, like the other prerogatives of the crown, are no longer exercised by the Queen personally, but by her ministers, responsible to Parliament itself. It is the prime minister who nominates the

bishops and other dignitaries of the church. It is the minister who nominates the ecclesiastical judges.

We must understand that it was not until the adoption of the Constitution of the United States with its first ten amendments (A. D. 1789) that the idea came to maturity that a state can foster and encourage religion, and not establish any church or make provision for religious instruction and worship. The Puritans, when they founded their commonwealth in Massachusetts, established a church or rather many affiliated churches. Virginia established the established Church of England in her colony, and the Dutch provided for public worship after the manner of the reformed Dutch Church of Holland in their settlement. But the Dutch had learned the great lesson of religious toleration, and had learned that lesson well. It is noteworthy that the first settlers of New Amsterdam provided for a schoolmaster and for a visitor of the sick before they did for a minister. While the Puritans were persecuting the Quakers, and the Quakers were ordering that no "Jew, Turk, infidel or heretic" should live within their colony, New Amsterdam gave a home to everything that was human. There men of all sorts and conditions met together; even Romanists and Protestants fraternized, and did kindly acts, the one for the

other. There, too, the national differences were minimized; Dutch, French and English, were spoken each by so many people that public documents had to be written in all three tongues.<sup>1</sup> I do not think that there is any doubt that it was religious toleration, the conception of William the Silent, the great product of the civilization of the Dutch, that was the seed-idea out of which grew the American principle of an entirely distinct separation between church and state. When Peter Stuyvesant was forced to surrender his charge to Colonel Nichols, one of his chief stipulations was that the Dutch should continue to enjoy liberty of conscience in divine worship and church discipline. Although the Church of England was afterward established in New York by a trick of Governor Fletcher, religious liberty was the keynote and idea of this most cosmopolitan of all the colonies that engaged in the great struggle for civil liberty in 1776. Toleration in religion, which President Eliot claims to be the best fruit of the last four centuries of civilization,<sup>2</sup> is the great gift of the Dutch to the world. Separation of church and state, with mutual consideration and regard, as of two friendly pillars of society, is the great gift of the

<sup>1</sup> (McConnell, *Hist. of the Am. Episcopal Church*, Chap. v., p. 62.)

<sup>2</sup> (*Am. Contributions to Civilization*, p. 385.)

American people. This gift is set forth in the first amendment of the Constitution of the United States, and reads as follows: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

And yet we must not understand by these words that the framers of this amendment intended and that the people of the United States understood that all religions are to be tolerated. Congress has taken action in stamping out Mormonism so far as it conflicts with the morals of Christianity as embodied in the municipal law of the land, and the Chinese are excluded from citizenship because of their crass paganism. We are to understand by the term religion the religions of the different Christian churches. The state fosters Christianity because the citizens of the state are for the most part Christian in character. At the meetings of Congress and of other legislatures, a clergyman usually offers a prayer in Christ's name to Almighty God.<sup>1</sup> Chaplains are employed for the army and navy out of a state polity that is Christian in character. The Lord's day, as one of the institutions of Christianity, is protected by law from desecration in order to secure to the community the privilege of undisturbed worship, as well as to all who

<sup>1</sup> (Except of course where a Jew is requested to officiate.)

labor a day of rest and of cessation from toil. The different states have laws by which the organizations of various denominations and churches of Christendom are encouraged and facilitated. In nearly all the states the property of churches is exempt from taxation, and because the property of the churches is exempt, so is that of the Jewish synagogues. On the other hand, the churches support the state by precept and example; they have learned and they teach their members the great maxim of the founder of Christianity, to render unto Cæsar the things that are Cæsar's, while giving to God the things that are God's. They see that society has a double organization, both conducive to the welfare of men: the state, which provides for the external order of things by law and politics; the church, which cares for the internal motives of men and their worship of Almighty God. And they believe that these two must mutually sustain and support the one the other in a common polity which, as it approaches more and more the doctrine and the precepts of Christ, realizes more and more on earth the will of God in Heaven.

Yet we must understand that the American principle of the entire separation of church and state is not a new thing in history. It is the principle that was in operation during the apostolic and sub-apostolic times, and the one there-



fore which takes us back to the teachings of Christ; and yet there is a difference to be noted. Until the time of Constantine and at certain periods afterward the state was inimical toward the church and often its dreadful persecutor. The American principle is a free state and a free church existing side by side in peace and amity, each one upholding the power and dignity of the other, yet neither asking for favors nor for pecuniary support, both working in their respective spheres for the welfare and happiness of men.

## LECTURE V.

### THE LAW OF THE STATE.

It is scarcely possible to give an exact and comprehensive definition of the term "law" as the word is used in our English tongue, because many English and American jurists have confounded the Latin term *lex* with *jus*. Thus Sidgwick says, "We must define Laws to be Rules of Conduct, which we are morally bound to obey, not solely on account of their intrinsic rightness but on account of the Rightful Authority from which they are derived."<sup>1</sup> And Willoughby says, "The State has been defined as a society viewed from its organized side, that is, considered in its aspect as a political organization for the attainment of an orderly existence and a possible development. In the effectuation of these purposes its activities are largely manifested in the utterance and enforcement of commands addressed to its citizens. Such commands we designate laws, and in the aggregate they constitute what is known as 'the law of the land.'"<sup>2</sup>

<sup>1</sup> (Methods of Ethics, Book III., Chap. vi., p. 266.)

<sup>2</sup> (The Nature of the State, Chap. vii., p. 142.)

These definitions follow, as we know, more or less blindly, the theory of Austin, the father of modern English jurisprudence, which makes all law to be nothing else than the aggregation of rules set by men as politically superior or sovereign to men as politically subject. Austin's theory, as Mr. Smith has conclusively shown, arose primarily from a confusion by him of the Latin word or term *jus* with that of *lex*. He defined law as the equivalent of *lex* but used it habitually as including *jus*.<sup>1</sup> "The theory of Austin is in fact wholly based upon the ambiguity of the term *law*; which is defined by him as though equivalent to the Latin *lex*, but habitually used as though including the whole law, or *jus*. Thus,—taking for illustration the famous position of Austin, that judicial decisions are in fact commands or expressions of the will of the State, and therefore in no wise different in essential nature from laws or statutes—it is obvious that the conclusion is deduced by an apparent syllogism of which the major premise is the proposition that all *law* is an expression of the will of the State or government, and the minor, that judicial decisions constitute part of the *law*; from which—assuming that the term *law* be used in the same sense in both propositions—the con-

<sup>1</sup> (I give Mr. Smith's analysis and criticism of the term law as used by Austin verbatim.)

clusion must necessarily follow. But, in fact, in the major premise it is used in the sense of *lex*, and in the minor in that of *jus*.

"The same fallacy is also illustrated by the equally famous position of the same writer, that custom does not constitute part of the law—the argument being as follows: (1) As before: All law (*lex*) is an expression of the will of the State. (2) Custom is not an expression of the will of the State. *Ergo*, (3) Custom is not part of the law (*jus*)."<sup>1</sup> We must understand that it is not always easy to distinguish the term *jus* from that of *lex* in the Roman law, for the different lawyers who expanded and expounded the law of Rome have not always been careful to keep the two words distinct; but this can be said, that though *jus* in its general significance means law, and in this sense includes all law, whether made by statute or otherwise, in a narrower sense it is opposed to *lex*, which is an especial written enactment—strictly a transaction entered into between the magistrate and the people. We must observe, however, that the term *lex* is sometimes used for law of every kind;—as where *natura* being made the equivalent of *jus gentium*, the term "*leges*" is employed for *jus civile*.<sup>2</sup> Still in

<sup>1</sup> (The Theory of the State, p. 30, Reprinted from Proceedings of the American Philos. Soc., Vol. XXXIV.)

<sup>2</sup> (Cicero De Off. III., V., § 23.)

its strict sense of a written enactment it is always opposed to *jus*. And again we must observe that *jus* (or rather *jura*) may be used to express a rule or set of rules of law contained in a *lex* or part of a *lex*, but it is never confounded with it. The reason for this is that the term *jus* (or *jura*) is often taken in a strict ethical sense to mean that which is right or lawful, that is, a rule, or rules, of law that have received exposition in a *lex*.

“The law of Rome was originally a body of customary law; and though it came in course of time to be based on statute, custom was still regarded as one of its original sources. This is the *jus* which is said to be *moribus constitutum*—not to be confounded with *boni mores*. The ultimate foundation of customary law was considered to be the common consciousness of the people of following a custom in obedience to a rule of law: the evidence of this consciousness is usage—repeated and continued use—‘*longa, inveterata, diuturna, antiquitus probata et servata tenaciter consuetudo.*’ . . . The Roman writers indeed frequently refer to a large part of their law as founded on *mores* or on the *mos majorum*, and not on *Leges*. Thus, Ulpian says that the *jus patriæ potestatis* is *moribus receptum.*”<sup>1</sup>

<sup>1</sup> (Smith, Dic. of Greek and Roman Antiquities, Third Ed., Vol. I., p. 1042.)

Let me draw your attention also to the fact that the Digest of the Roman Law of Justinian begins,<sup>1</sup> "The *Jus Civile* or civil law of Rome is divided into *jus publicum* and *jus privatum*. *Publicum jus* is defined to be that which has regard to the condition of the commonwealth (*quod ad statum rei Romanæ spectat*). *Privatum jus* that which has regard to the welfare of individuals (*quod ad singulorem utilitatem*)."  
In Section 9 under said book and title, Gaius says: "All people who are governed by law and custom (*legibus et moribus*) use partly their own law (*jus*) and partly that which is common to all mankind. For the law (*jus*) which a people establishes for itself is peculiar to that state, and is called *jus civile*, as the law (*jus*) peculiar to that state. But the law (*jus*) which reason has established as natural among all mankind, is equally observed among all, and is called *jus gentium*, as being that law (*jus*) which all nations (*gentes*) use."

It is under Title III. of said Book I., Section 1, that *lex* is defined by Papinian. "Lex is the common precept, the counsel of wise men, the punishment of crimes which through wilfulness or ignorance have been committed, the common agreement of the republic." Under Section 7 of said Title and Book, the virtue of law (*lex*) is

<sup>1</sup> (Book I., Title I., Section 1.)

said to be "to command, to forbid, to permit, to punish." The difference between *jus* and *lex* in the Roman law is seen at once. Indeed, in the works of the Roman writers and jurists, *lex* is almost invariably used to denote an enactment of any body (or even individual) constitutionally empowered to legislate. Properly it was used to denote the enactments of the *Comitia Centuriata*, although, as I have said, it afterward came to have a more extended meaning, when *jus* was taken to mean the thing that was right.

Strange that Austin and his followers should have lost sight of the distinction the Romans themselves drew between *jus* (that which is right or just) and *lex* (that which is agreed upon and commanded). How did it come about? Through the desire of men, as I believe, to find some ultimate and exact source of law, through their efforts to find an authority for all rules of conduct; through their dread of depending upon custom or opinion for the revelation of right; through their misprision of human nature.

And so we turn to the historical or ethical school of jurists and ask them to tell us what they found to be the way law came into being and effect. Sir Henry Maine, in a well-known passage of his treatise on ancient law, says: "The earliest notions connected with the conception, now so fully developed, of a law or rule of life are

those contained in the Homeric words 'Themis' and 'Themistes.' 'Themis,' it is well known, appears in the later Greek pantheon as the Goddess of Justice, but this is a modern and much developed idea, and it is in a very different sense that Themis is described in the Iliad as the assessor of Zeus. . . . When a king decided a dispute by a sentence, the judgment was assumed to be the result of direct inspiration. The divine agent, suggesting judicial awards to kings or to the gods, the greatest of the kings, was *Themis*. The peculiarity of the conception is brought out by the use of the plural. *Themistes*, Themises, the plural of Themis, are the awards themselves divinely dictated by the judge. Kings are spoken of as if they had a store of 'Themistes' ready to hand for use; but it must be distinctly understood that they are not laws, but judgments. 'Zeus, or the human king on earth,' says Mr. Grote in his History of Greece, 'is not a law-maker, but a judge.'"<sup>1</sup> And in this connection I would cite the words of Mr. Edward Jenks in his admirable work on "Law and Politics in the Middle Ages."<sup>2</sup> "As we go back upon the history of Law, we very soon reach a point at which the Austinian theory is helpless to explain the facts. Here is a 'source' of law, an authority which, for some reason or another, great masses

<sup>1</sup> (Chap. i., p. 3, *et seq.*)<sup>2</sup> (Chap. i., p. 2.)



of men feel themselves bound to follow, not because they choose, but because they must. And yet it is certainly not a command of the State, direct or indirect. Upon critical examination it may turn out to be the work of a mere private composer. Why do men obey it? Further back again, we find a purely impersonal document, compiled, no one knows exactly how or by whom, and yet it is the controlling force which shapes the daily conduct of men. They do not even consider the possibility of disregarding it. It is not the work of the State, it may not even be recognized by the State, there may be no State to recognize it. Yet the essential ideas of Law, the evident ancestors of our modern juristic notions, are clearly there."

But we must not understand that the kings and judges of ancient times, nor yet the compilers of law of the Middle Ages, sought for the thing that was abstractly just. Human law was not originally based upon equity, but rather upon custom and family observances. "Man," says M. Fustel de Coulanges, "believed that the sacred hearth, in virtue of the religious law, passed from father to son; from this it followed that the house was hereditary property. The man who had buried his father in his field believed that the spirit of the dead one took possession of this field forever, and required a perpetual

worship of his posterity. As a result of this, the field, the domain of the dead, and place of sacrifice, became the inalienable property of a family. Religion said, 'The son continues the worship—not the daughter;' and the law said, with the religion, 'The son inherits—the daughter does not inherit; the nephew by the males inherits, but not the nephew on the female side.' This was the manner in which the laws were made. They presented themselves without being sought."<sup>1</sup> In other words, the laws arose necessarily out of the conditions of the patriarchal family, and the patriarchal family rested, as we know, upon religious observances. We find this last fact attested to as strongly by the status of the family under the Mosaic dispensation as in the early histories of Greece and Rome.

From this idea of a divine agency suggesting judgments in especial cases that would uphold the family and family religion, there is a wide difference to the conception of the Deity dictating an entire code or body of law; yet to this conception most ancient peoples came, and they came to it logically. The Cretans attributed their laws to Jupiter and not to Minos; the Lacedemonians believed that their legislator was Apollo and not Lycurgus; the Romans believed that Numa wrote under the direct inspiration of

<sup>1</sup> (The Ancient City, Book III., Chap. xi., p. 251.)

the goddess Egeria ; and both the Hindus and the Hebrews held that the laws of Manu and of Moses respectively were given directly by God Himself. That we hold together with the Hebrews that their laws were God-given is not the question now. Nor is the question the reason why we believe this. The question is simply the well-nigh universal phenomenon of belief current among men, that God, or the gods, at one time inspired men directly to pronounce judgments ; and at another gave a body or bodies of laws to mankind.

And these bodies of law, upon what did they rest ? Upon the family and upon the religious observances of the family. Yet not entirely upon these, upon also the character of the god or gods who inspired them. Men's idea of the beings they worshipped (however they acquired them) gave rise invariably to their earliest ideas of right or justice. And this is the glory of the Mosaic dispensation, as received and acted upon by the Hebrews. Moses' idea of God was great and glorious. It was only as God Almighty that the Deity had been known to the patriarchs ;<sup>1</sup> but to Moses was God known by the name Jehovah, by, as we understand, His inner attributes ; and these inner attributes were revealed in the proclamation wherein God declared Him-

<sup>1</sup> (Exodus vi. 3.)

self to be "the Lord, the Lord, a God full of compassion and gracious, slow to anger, and plenteous in mercy and truth; keeping mercy for thousands, forgiving iniquity and transgression and sin: and that will by no means clear *the guilty*; visiting the iniquity of the fathers upon the children, and upon the children's children, upon the third and upon the fourth generation."<sup>1</sup>

It was by, or from out, this great personality that the laws of the Hebrews were given, and they found their truest exposition therein. And hence there arose among the Hebrews very early in their history the great idea of divine and abstract justice. Jehovah was full of compassion, and plenteous in mercy, forgiving iniquity and transgression and sin, but He would by no means clear the guilty, rather would He visit iniquity upon the family of the transgressor for three or four generations. Herein it is shown that it is not so much the doing of the things that fulfil the law of ordinances (as necessary as they were by the Levitical system) that are pleasing to Jehovah, and therefore just, but the avoiding of things that are essentially wrong and iniquitous, the becoming, and being compassionate and generous, kind, merciful and truthful toward man, as Jehovah was; yet not forgetting to punish the

<sup>1</sup> (Exod. xxxiv. 5, 6, 7, R. V.)

guilty. Above the law there always stood the supreme idea of the justice of God, and the same idea, it was obvious, ought to be found in man. Again and again the prophets tried to make the people understand this, but they would not act upon the truth; they invariably preferred the Levitical ordinances to the essence and spirit of the Law. Nothing could be plainer than the words of Micah: "He hath showed thee, O man, what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God."<sup>1</sup> And yet Christ said, some hundreds of years after, to the men of His generation, "Ye tithe mint and anise and cummin, and have left undone the weightier matters of the law, judgment and mercy and faith: but these ye ought to have done, and not to have left the other undone."<sup>2</sup>

But the idea of justice arose in an entirely different way among the classical peoples. "More than once," says Sir Henry Maine, "the jurisprudence of Western Europe has reached a stage at which the ideas which presided over the original body of rules are found to have been driven out and replaced by a wholly new group of notions, which have exercised a strong and in some cases an exclusively controlling influence on all the subsequent modifications of the law. Such a

<sup>1</sup> (vi. 8, R. v.)

<sup>2</sup> (Matt. xxiii. 23, R. v.)

period was arrived at in Roman law, when the theory of a Law of Nature substituted itself for the notions which lawyers and politicians had formed for themselves concerning the origin and sanctions of the rules which governed the ancient city. A similar displacement of the newer legal theory took place when the Roman law, long since affected in all its parts by the doctrine of Natural Law, became, for certain purposes and within certain limits, the Canon law—a source of modern law which has not yet been sufficiently explored.”<sup>1</sup>

Let us ask ourselves how it was that the law of nature came into being and usurped the place of the older sanctions for the rules of the Roman law? The question has been confused by the poetical conception of a golden age of man, existing before the organization of man in society, creeping into juristic writings, but this conception plays but little part in the development of the jurisprudence of Rome, and cannot be said to have become popular in the world until the time when Rousseau adopted it. The Roman doctrine of *jus naturale* originated with Aristotle; and that in his mind it had no connection with the impossible hypothesis of a golden state of nature, is shown by his definition of man, as being, by nature, a political animal, and by his conception

<sup>1</sup> (Village Communities, Lect. i., p. 19.)

of justice as "complete virtue, although not complete in an absolute sense but in relation to one's neighbors,"<sup>1</sup> and "political justice, *i. e.*, such justice as exists among people who are associated in a common life with a view to independence"<sup>2</sup> as the only kind of justice; for man is always found in the social or political state, and always therefore subject to political law.

Aristotle alleged further, that "political justice is partly natural and partly conventional. The part which is natural is that which has the same authority everywhere, and is independent of opinion; that which is conventional is such that it does not matter in the first instance whether it takes one form or another, it only matters when it has been laid down, *e. g.*, that the ransom of a prisoner should be a mina, or that a goat and not two sheep should be offered in sacrifice, and all legislative enactments which are made in particular cases, as the sacrifice in honor of Brasidas at Amphipolis, and the provisions of an Act of Parliament."<sup>3</sup> It was this distinction that was made by Aristotle between "the natural" and "the conventional," that the Roman jurists adopted. They began to regard the law as consisting of two parts, namely, the *jus gentium* or *naturale*, and the *jus civile*, even

<sup>1</sup> (Ethics, Book V., Chap. iii., p. 137, Welldon's Translation.)

<sup>2</sup> (*Id.*, Chap. x., p. 157.)

<sup>3</sup> (*Id.*, p. 159.)

as we have seen in the definition of Gaius given in the Pandects. But the *jus naturale* had no relation in the beginning to the fancied state of nature in a golden age. It is probable that the idea of *jus gentium* took its rise before the kindred idea of natural justice came in to substantiate the thought of what was just among men; but it was nevertheless enlarged by it when the lawyers began to study and to treat the law from the standpoint of philosophy.

We have seen how the *jus gentium* came into existence, through the concourse of many people of the old Italian tribes in Rome who could not be judged by the *jus civile*, because they were not *Quirites*, and who could therefore not have the benefit of the Quiritarian law. Therefore it was that the Prætors resorted to the expedient of selecting the rules of law common to Rome and the different communities from which the immigrants came. The Prætors for some hundreds of years issued at the beginning of their respective terms of office an edict setting forth the rules which would govern them in their office of judge, and it became the custom for each Prætor to issue his predecessor's edict, with such changes and additions as seemed to him wise and expedient. The Prætors' proclamations thus became lengthened year by year, and obtained the name of the perpetual edict, until the issuance of



the edict of Salvius Julianus, in the reign of the Emperor Hadrian. He arranged the edict in a systematic order; hence the edict was subsequently called by the Roman lawyers the "edict of Julianus."

Herein in the edicts, as promulgated by the Prætors, came the opportunity of influence of Grecian thought and philosophy. It was the Stoical philosophers, we observe, who took up the idea of living according to the law of nature and made it popular; and the Stoical philosophy became the prevalent philosophy of Rome. The alliance of the lawyers with Stoical philosophy continued through many centuries, and the long diffusion of the ideas of the philosophers among the members of the juristic profession was sure to affect greatly the art which they practiced. But we must not look to see any number of Stoical dogmas incorporated in the body of the Roman law. The influence of Stoicism is not perceived in the number of specific doctrines which it contributed to the law, but rather in the single idea it lent to it of natural law or justice. After nature had become a household word in the mouths of the Romans, the belief gradually spread among the lawyers that *jus gentium* was in fact nothing other than *jus naturale*, and that the Prætor in forming his edict on the principle of *jus gentium*, was gradually approaching a

type of natural or divine justice. It is true, that in the minds of some of the Roman lawyers there arose a conception of nature as a state of the people that had been lost, but, for the most part, the teaching of Aristotle was not departed from, as we can see in the definitions of law already given from the Pandects. In other words, the idea that became prevalent among the Roman lawyers, through the working upon the *jus gentium* of the *jus naturale*, and their identification, was that justice and right is a part of the law. And this idea, we have seen, was the Jewish idea, as the same received exposition by Moses and the prophets. This is not to say that the Roman law became like the Jewish, but only that justice became the end and aim of the one and the other. And thus the civil law came into line with philosophy and religion.

We have seen that it was the Stoical philosophy which furnished the Roman lawyers with the idea of a state of nature and led them to the thought and definition of Aristotle. But whence did the Stoical philosophers get their impulse and the moral earnestness, which is their most honorable characteristic? Zeno, the founder of the school of the Porch, was a native of Citium, a Phœnician colony in Crete, and probably of Semitic ancestry. He is called "the Phœnician."

To Eastern affinities Stoicism was without doubt largely indebted for the features which distinguishes it from other schools of Grecian philosophy. The contrast between the light, reckless gaiety of the Hellenic spirit, as witnessed to in the school of Epicurus, the other of the two last phases of classical philosophy, and the stern, unbending, almost fanatical ideas of the philosophy of Zeno, is as complete as can be imagined. "Stoicism was in fact the earliest offspring of the union between the religious consciousness of the East and the intellectual culture of the West. The recognition of the claims of the individual soul, the sense of personal responsibility, the habit of judicial introspection, in short, the subjective view of ethics, were in no sense new, for they are known to have held sway over the mind of the chosen people from the earliest dawn of their history as a nation. But now for the first time, they presented themselves at the doors of Western civilization and demanded admission. The occasion was eminently favorable. The conquests of Alexander, which rendered the fusion of the East and West for the first time possible, also evoked the moral need which they had thus supplied the means of satisfying. By the overthrow of the state the importance of the individual was enhanced. In the failure of political relations, men were thrown back on their inward

resources and led to examine their moral wants and to educate their moral faculties.”<sup>1</sup>

But though the element of Stoicism was derived from the East and received its first development in Grecian soil, its practical success was best attained in the field of Rome. It is this later, or Roman, period, which has attracted to itself so much attention, and this not only because its practical influence became most manifest in the lives of the Romans, but because it became so great a power in the development of the civil law. In the time of the Antonine Cæsars, which men agree to be the golden age of Roman jurisprudence, the most renowned jurists were associated with Stoicism, and many were the actual disciples of that philosophy. Herein we see, in corroboration of what has gone before, the influence of religion, or better, of morality, upon philosophy, and of moral philosophy, or better, of ethics, upon law; the tendency being ever stronger and stronger toward justice and right. Let us see what the influence of the greatest religious and moral teacher of the world has been upon the law or body of laws of the world; for all the world recognizes to-day that the common law, or body of common law, of civilized society is one and the same, and that it is essentially that law that was developed in

<sup>1</sup> (Lightfoot, *Dissertations on the Apostolic Age*, iv., p. 253.)

Rome, and became under Justinian the *Corpus Juris Civilis*.

Many English jurists have striven to show that the common law of England was something other. It is true that it was something other in its origin, yet a knowledge of the conditions of the life of the English people as revealed in "Domsday Book and Beyond,"<sup>1</sup> must soon convince an impartial reader that there was very little that can properly be called "law" before the Norman conquest. There were customs, of course, and rights and responsibilities, but little or nothing of jurisprudence. Mr. Jenks, who is one of the many writers who have minimized the effect of the Roman law upon the law of England, is yet found to say,<sup>2</sup> "At the time of the Norman conquest England is from a legal standpoint the most backward of all Teutonic countries save only Scandinavia." But the Norman conquest soon effected a great change. "As soldiers, as ecclesiastics, as administrators, above all as jurists, they (the Normans) had no equals, at least North of the Alps."<sup>3</sup> It is known and understood by all who have studied these times that they had been trained by Lanfranc and Anselm, the great Prior and the great Abbot of Bec, who

<sup>1</sup> (Maitland, *Three Essays in the Early History of England*.)

<sup>2</sup> (*Law and Politics in the Middle Ages*, Chap. ii., p. 32.)

<sup>3</sup> (*Id.*, p. 33.)

were Italians and who were well acquainted with the Civil and with the Canon law. These two ecclesiastics afterward occupied in succession the primary see of Canterbury for nearly forty years. We observe, with Mr. Jenks, that the immediate effect of the conquest upon the history of law in England was to set aside all the local laws and to set up a "common law" for all the land, because England became one great fief in the hands of the king and was to have one law. The phrase "common law" was not new, however; canonists had used it in speaking of the general law of the church as distinguished from local customs of particular countries. The English judges and jurists borrowed the term from the Canon law and applied it to the law of the royal court. And they borrowed from the same source many rules and principles and doctrines.<sup>1</sup> And the Canon Law, though based directly upon the canons of councils, the sentences of the fathers, the decretals, true or false, of the popes, and the canonical replies made to questions put at various times to the Roman pontiffs, is yet rooted in the Civil law of Rome, and draws from it much of its strength and vitality. But the English judges and jurists did not only resort to the Canon law and thus to the Civil for instruction and inspiration, they turned to the *Corpus Juris*

<sup>1</sup> (*Id.*, Chap. iv., p. 119.)

directly. Whole texts were taken from it with the terms unaltered, though their origin was never acknowledged by the older justices and chancellors of the realm. The most striking illustration of this fact is found in the treatise of Bracton, with reference to which Sir Henry Maine makes the following observation: "That an English writer of the time of Henry III. should have been able to put off on his countrymen as a composition of pure English law a treatise of which the entire form and a third of the contents were directly borrowed from the *Corpus Juris*, and that he should have ventured on this experiment in a country where the systematic study of the Roman law was formerly proscribed, will always be among the most hopeless enigmas in the history of jurisprudence."<sup>1</sup>

The philosophy of the rise of the law in the middle ages is as it seems to me expressed by Maitland.<sup>2</sup> Speaking of the legal ideas in which feudalism is expressed, he says: "If we approach them from the standpoint of modern law, if we approach them from the standpoint of the classical Roman law, they are confused ideas. In particular, no clear line is drawn between public and private law." But the question arises whether we are right in applying to this state of things

<sup>1</sup> (Ancient Law, Chap. iv., p. 79.)

<sup>2</sup> (Domesday Book and Beyond, Essay II., p. 224.)

such a word as “‘confusion,’ a word which implies that things that once were distinct have wrongfully or unfortunately become mixed up with each other, a word which implies error or retrogression. Now, no doubt, from one point of view, namely, that of universal history, we do see confusion and retrogression. Ideal possessions which have been won for mankind by the thought of the Roman lawyers are lost for a long while and must be recovered painfully. Lines that have been traced with precision are smudged out, and then they must be traced once more. If we regard western Europe as a whole, this retrogression appears as a slow change.”<sup>1</sup> Certainly there was no “confusion” when we regard the law of the peoples of the middle ages in relation to their own earlier and primitive law; but there was great “confusion” when we regard their law in relation to the Civil law of Rome. And this was the effort of the barbarous peoples of western Europe during the dark days of their history—to push back and nearer to the clear shining light of the *Corpus Juris Civilis*. The process was slow and painful and the steps by which the retrogression was made were often obscure, but little by little the great principles of the Roman law were recovered and became the common

<sup>1</sup> (*Id.*)



property of the canonists and jurists, and then of the peoples of Europe.

We have seen that law took its rise in the dicta of kings and the customs of the family, which customs were always religious. We have seen also that the idea of law being and becoming just arose in Israel out of the idea of the justice of Jehovah, and in Rome out of the common agreement of the neighboring *gentes* in what was right or just. And in Roman law we have seen, moreover, that the idea of justice was enlarged by the philosophy of the Greeks, and more especially by that of Aristotle, that there is a common law, or *jus naturale*, that pertains to all civilized men. And, lastly, we have seen how this idea of the *jus naturale* was associated with the principal tenet of Stoicism, to live according to nature. And Stoicism, we have learned, was a seed brought from the eastern soil of rightness of conduct, nourished by the thought of the Greeks and brought to maturity by the practical turn of mind of the Romans. Dicta and custom and tribal observances and natural right and personal morality have thus been brought together in the development of the law. Our task is now to see what the teaching of Christ has done for its progress and expansion.

But first we must recognize that, although in the abstract questions of right and wrong pre-

sent many difficulties, yet in the concrete most of them disappear, and thus there results a unanimity in the moral judgments of mankind in regard to the common actions of man, in the same, and often in different states of civilization, which would be wonderful were it not for the fact of our belief in the unity of the race and in its divine origin. Thus, for instance, no man within the pale of civilization can contemplate an act of robbery or murder with approbation, nor does any person regard the retention of a pledge when payment of a loan has been made as right, and all men have held that for every kind of injury done some compensation should be made. It is such principles as these that furnish the test by which the various theories of morality are to be judged, and it is to them that the advocates of all theories make their last appeal. "But the difficulty," says Mr. Smith, "consists in expressing satisfactorily the ultimate test or criterion by which conduct is to be judged; and on this point the widest difference of opinion prevails."<sup>1</sup>

It is not necessary for me to show how the differences as to the test and criterion of conduct arose; nor to what results, theoretical and practical, they have led. I wish rather to point you to a fact which most publicists have partly, if

<sup>1</sup> (The Theory of the State, p. 106.)

not wholly, ignored in their endeavors to find an end that ought to regulate conduct; and that is the fact that, since the gospel has been preached, men have had as a means of measurement (within Christendom at least) the mind of Christ, and that consciously or unconsciously they have ever consulted it. It was the Grecian philosopher Protagoras, who said that, "man is the measure of all things, of the things that are, that they are, of the things that are not, that they are not. Just as each thing appears to each man so is it for him. All truth is relative. The existence of the gods is uncertain."<sup>1</sup> Therefore, man, or man's thought, according to Protagoras, is the sole test or criterion of what is just and right. With Plato there came in a newer and higher view of life and conduct. This deep thinker referred everything to God. The Platonic philosophy centred in the Theory of Ideas, and the highest idea was the idea of the good, which is God. Speaking of God, the creator and artificer of the universe, Plato says, "He was good; and in the good envy is never engendered about anything whatever. Hence, being free from this (envy) He desired that all things should as much as possible resemble himself."<sup>2</sup> God, then, who is good and who desires all things to resem-

<sup>1</sup> (Ueberweg, *Hist. of Phil.*, Vol. I., § 28.)

<sup>2</sup> (The *Timæus*, Chap. x., p. 333, Bohn's Ed.)

ble Himself, is the measure of all things, and justice, by which Plato does not mean simply the virtue of rendering to all their dues, but which with him stands for the harmonious development of the soul, consists in the fulfilment by man of his proper functions in relation to God, and in his efforts to resemble his Maker. This theory of Plato was a beautiful theory and one that we recognize to-day as Christian in character. But how was man to know the Idea of ideas and to perceive His thought? He could not climb up to the place of God and see the world and human affairs from His point of view. This difficulty Aristotle, the great disciple of Plato, sought to avoid by looking at man as he ought to be, as a perfect citizen in a perfect state.

Man, avers the Stagirite, has need of man for his own development and for the attainment of the real ends of life. Only in a state is the ethical problem capable of solution. Man is by nature a political animal and must live in an organized society, for "in the order of Nature the State is prior to the household or the individual."<sup>1</sup> The state arose originally for the protection of life, but it ought to exist for the attainment of the supreme good, as it is the supreme association and embraces all the other associations of life. The supreme good which is first obtained in a

<sup>1</sup> (Politics, Book I., Chap. ii., p. 6, Welldon's Trans.)

state is independence, and independence can be had only where law and justice are observed and practiced. "Just action," he says, "is bound up with the existence of a State; for the administration of justice is an ordinance of the political association and the administration of justice is nothing else than the decision of what is just."<sup>1</sup> Again, as necessarily follows from such ideas, Aristotle declared that justice is "the supreme virtue, 'more glorious than the star of eve or dawn'; or as the proverb runs,

'Justice is the summary of all Virtue.'"<sup>2</sup>

And justice, we have seen, he defined to be the "complete virtue," but complete only "in relation to one's neighbors."<sup>3</sup> We see then, when we come to ask what is the test or criterion of conduct in the philosophy of Aristotle, that it is the just, or as we may say, the perfect man. But where was such an one to be found? Surely not in the city-states of Greece, nor yet in the great republic or empire of Rome, although in both Grecian and Roman history we find many examples of lofty, though faulty, character displayed, as Plutarch has shown us in his "Parallel Lives" of illustrious Greeks and Romans; but

<sup>1</sup> (*Id.*, p. 7.)

<sup>2</sup> (*Ethics*, Book V., Chap. iii., p. 137.)

<sup>3</sup> (*Id.*)

not in vain did Virgil, on the eve of a revelation of a better life, proclaim :

“The latest era of Cumæan song  
Hath now arrived ; afresh the mighty round  
Of ages is begun. And now returns the virgin,  
Returns the dynasty of Saturn. Now  
A new succession is from heaven on high  
Let fall.”<sup>1</sup>

Isaiah, in the loftiest strains of prophecy, had years before foretold the advent of such a one. “There shall come forth a shoot out of the stock of Jesse, and a branch out of his roots shall bear fruit ; and the spirit of the Lord shall rest upon him, the spirit of wisdom and understanding, the spirit of counsel and might, the spirit of knowledge, and of the fear of the Lord ; and his delight shall be in the fear of the Lord ; and He shall not judge after the sight of His eyes, neither reprove after the hearing of His ears ; but with righteousness shall He judge the poor, and reprove with equity for the meek of the earth.”<sup>2</sup> And so in the era of Augustus, there was born of the Virgin Mary, espoused to Joseph, of the lineage of Jesse, Jesus, the Christ, the Saviour of men.

Whatever we may think of the virgin-birth of the son of God and of Man is not the question

<sup>1</sup> (Eclogue iv., Pollio.)

<sup>2</sup> (Isaiah xi. 1-4, R. V.)

here: we are not concerned in any way with the doctrine of the Incarnation, but this all men must admit, that Jesus Christ was and is the greatest teacher of morality that the world has ever known, and that He offered and offers still in Himself the best and safest test and criterion of what is just and right; that He is, therefore, the highest and the perfect man, the measure of all things human. When we look for an exposition of the teachings of Christ in the gospels, we must say that we can ignore none of His words and but few of His actions; and yet we quickly see that the sermon called the "Sermon on the Mount" is the first and greatest revelation of His doctrine, and we will therefore confine our attention now to it. What is it that distinguishes this sermon from every other discourse that we have of men? (1) The authoritative way in which it is expressed, so different from the tentative methods of the scribes of Israel and the philosophers of Greece; (2) the constant dwelling upon the spirit of the law rather than upon its letter; (3) the accommodation of the individual to the social life of man. In the beginning, the blessedness of certain personal characteristics is published, and then, after the proclamation that the possession of such characteristics are the light and salt of the earth, and the announcement that the law of Moses and the teachings of the prophets must be

fulfilled, comes an exposition of how they are to be carried into effect in their widest and truest significance. The inference is that only those who have the qualities pronounced to be blessed can fulfil the law and the teachings of the prophets, can be just and upright in their dealings with their fellow-men, and are therefore fit for the highest social life and the kingdom of God. These only can organize society as it should be organized, can make the noblest state.<sup>1</sup>

It is no exaggeration to say that since the time when this sermon was first preached, even to this present day, there is not a man, who has heard it, who has not been influenced by its precepts in his conduct in some degree; and that every law that has arisen in Christian society in any way, by usage or custom, by judgment of prince or court, by act of synod or of legislature, has had some reference to it and its great Preacher. Since Christ came, men have consciously or unconsciously had a conception of what the perfect man should be in a perfect society, and they have therefore striven to carry out His teaching and to make His ideal of right prevail therein—not always, of course, but always when they have followed their noblest aspirations. And so when men ask for the true test and criterion of conduct of men in society, we must answer in the words

<sup>1</sup> (St. Matthew, Chap. v., *et seq.*)



of Jesus Christ's greatest disciple, St. Paul, "We have the mind of Christ."<sup>1</sup>

And yet some men, when they see how little direct effect the teaching of Christ had upon the development of the Roman law, say the world could have gotten on and perhaps would have gotten on better without His teaching. Let us see. But first let us note what was the effect of Christianity upon the law of Rome. Roman law, we have seen, reached its highest state of perfection in the era of the Antonine emperors, and that era was over a hundred years before the accession of Constantine. When, after the empire had become Christian, the emperors sought to simplify the body of the law by their edicts and decrees, so vast and unwieldy had it become, it was a difficult thing to make an impression upon it. "When Justinian ascended the throne, the reformation of the Roman jurisprudence was an arduous but indispensable task. In the space of ten centuries, the infinite variety of laws and legal opinions had filled many thousand volumes, which no fortune could purchase, and no capacity digest. Books could not easily be found; and the judges, poor in the midst of riches, were reduced to the exercise of their illiterate discretion."<sup>2</sup> Besides we must not look to

<sup>1</sup> (1 Corinth. ii. 16, R. v.)

<sup>2</sup> (Gibbon, Vol. VIII., Chap. xlv., p. 33.)

Christianity for direct rules of law. Christ did not undertake to lay down new principles, but to give old ones a new and spiritual significance. It was with Christianity as it was with Stoicism. Says Sir Henry Maine, speaking of the influence of this philosophy on Roman law, "It is a serious, though a very common, error to measure the influence of Stoicism on Roman law by counting up the number of legal rules which can be confidently affiliated on Stoical dogmas. It has often been observed that the strength of Stoicism resided not in its canons of conduct, which were often repulsive and ridiculous, but in the great though vague principle which it inculcated of resistance to passion."<sup>1</sup> And there is another thing which we must take into consideration when we try to measure the influence that the teaching of Christ had upon the development of the civil law, and that is that Jesus Christ, when brought before Pontius Pilate, recognized both by his words and by his demeanor that the law that Pontius Pilate was set to administer had in it the element of justice. And why not? Why should we take a narrow view of life, and of life's history, and believe that justice was simply revealed to the Jews, and that they alone knew the principles of morality? "The invisible things of Him," says St. Paul,

<sup>1</sup> (Ancient Law, Chap. iii., p. 53.)

“since the creation of the world are clearly seen, being perceived through the things that are made, *even* His everlasting power and divinity.”<sup>1</sup> And Tertullian, one of the first of the great Latin Fathers, a scholar learned in the law of Rome, wrote: “Why should God, the Founder of the universe, the Governor of the whole world, the Fashioner of humanity, the Sower of universal nations, be believed to have given a law through Moses to one people, and not be said to have assigned it to all nations? For unless He had given it to all by no means would He have habitually permitted even proselytes out of the nations to have access to it. But—as is congruous with the goodness of God, and with His equity as the Fashioner of mankind—He gave to all nations the self-same law, which at definite and stated times He enjoined should be observed, when He willed, and through whom He willed, and as He willed.”<sup>2</sup>

But why multiply authorities? It is self-evident that as God made of “one every nation of men for to dwell on all the face of the earth,” He gave them all the same laws of right conduct; though to the Hebrews were the two tables of the Law especially given, or added, be-

<sup>1</sup> (Romans i. 20, R. v.)

<sup>2</sup> (The Ante-Nicene Fathers, Tertullian, “An Answer to the Jews,” Chap. ii.)

cause of offences. It was these same laws of right conduct (as they had been declared by Moses) that Christ expounded on the mount. In those principles wherein the Roman law was just (and there were many of them) it would necessarily stand; in those commands wherein it was unjust, it would necessarily have to be modified or done away. The jurisprudence of the old Roman Empire admitted at first only in a limited degree this modifying power, but gradually, as larger numbers of the subjects of the Empire became adherents of Christ, it had, *per force*, to take Christ's teaching more and more into consideration, both as creating a necessity for new laws conforming to the changed order of things, and also because, the minds of many of the legislators becoming dominated by Christian ideals, it could not help but do so.

Justinian sought to consolidate in his eternal legislation all the ancient and modern laws and customs of the realm. "But the change which had come over the Roman empire is manifest at once. That Justinian is a Christian Emperor appears in the front of his jurisprudence. Before the august temple of the Roman law there is, as it were, a vestibule in which the Emperor seats himself as the religious legislator of the world in its new relation toward God."<sup>1</sup> And so, what we

<sup>1</sup> (Milman, *Lat. Chris.* Vol. I., Book III., Chap. v., p. 485.)

ought to look for and at is the influence of the teaching of Christ, or as we may say, of Christianity, upon the Roman world and the world of the barbaric nations that followed that of Rome.

We have seen in a former lecture that there were four great things or elements that, coming together, made the modern state, and that they were, the philosophy of Greece, the law of Rome, the Germans, and Christianity. We are now to study the effect of Christianity upon the civilization of the world. I have touched upon it so often that it will not be necessary to go into details. I desire simply to point out now some heretofore unnoticed things. "The new force which was born into the world with the Christian religion was evidently, from the very first, of immeasurable social significance."<sup>1</sup> The original impulse appeared to be weak, but it was in fact tremendous. Who would ever have supposed that the preaching of a few illiterate fishermen and of an apparently "mad" Pharisee, would have completely changed the hearts of men and the trend of civilization? Who would ever have believed that it would have undermined and destroyed the most powerful and most carefully organized society that mankind had up to that time, perhaps ever, evolved? Who would ever have believed that it would

<sup>1</sup> (Kidd, "Social Evolution," Chap. vi., p. 123.)

have built up in men's hearts and minds the ideal of a newer and nobler order of social life? And yet it did all these things. Christianity not only destroyed, but it constructed, and it is this that gives it its greatest claim upon humanity. Apart, of course, from its revelation of the Godhead in relation to man, the constructive principle of the Christian life was of primary and chief importance. Men were transformed. The old motives and ideas which had moved them, moved them now no more. In the place of the fact of citizenship, there came the ideal of brotherhood. In the place of faith in the eternity of Rome, there came a belief in the eternal fatherhood of God. In the place of indifference to decency and morality, there came a frenzy to be pure and clean. In the place of a neglect of the claims of humanity, there came a love for mankind that touched the stars. "There has probably never existed upon earth a community whose members were bound to one another by a deeper or purer affection than the Christians, in the days of the persecution."<sup>1</sup>

It is not necessary to inquire just why these things came to pass, but apart from the divine order we can see that, before the teaching of Christ was made known to men, the old religion and the ethical system or systems upon which

<sup>1</sup> (Lecky, *Hist. of European Morals*, Vol. I., Chap. iii., p. 424.)

the dominion of Rome had been built had begun to decay, and men were longing for something better. "Religion, once the foundation of the laws and rule of personal conduct, had subsided into opinion. The educated, in their hearts, disbelieved it. Temples were still built with increasing splendor; the established forms were scrupulously observed. Public men spoke conventionally of Providence, that they might throw on their opponents the odium of impiety; but of genuine belief that life had any serious meaning, there was none remaining beyond the circle of the silent, patient, ignorant multitude."<sup>1</sup> A few short years after the empire had been established a Nero could command that the worthiest citizen should take his own life, and the despot's desire formed the command to do so. Later on, a Commodus could drag the majesty of the purple through the blood and mud of the arena, and yet he could compel the senate to decree that he was the Roman Hercules. And still later, a Heliogabalus could bring with him the effeminate dress of an Oriental priest of the sun to the throne, and make the Romans to submit to his wild and wanton manners. And all these, and thousands of men, their minions and followers, and thousands, the minions and followers of other emperors and rulers, indulged in excesses

<sup>1</sup> (Froude, *Cæsar*, Chap. i., p. 7.)

and orgies so horrid and vile that they cannot be named in our honest English, but must be left untranslated in the Latin tongue.

But, as we have said, the preaching of Christ changed all these things. What was it in His teaching that gave hope to a despairing world, and animated the effete society with new motives and ideas? Principally the facts, and the belief in the facts, of the Fatherhood of God, the Sonship of Christ and the brotherhood of all men as sons of God and brothers of Christ. In spite of the best thought of the best philosophers, that God was one and indivisible, it needed a divine revelation to convince mankind that their "gods many and lords many" were ridiculous, and that their worship, running off, as it did, into all sorts of debauchery, was debasing to the soul, and subversive of the foundations of society and the state. And yet this revelation would not in all probability have destroyed the polytheism of the classical nations, unless with the revelation there had been vouchsafed to mankind the assurance that God was, and is, the Father of all men, and that Jesus Christ, His only-begotten Son, is our brother. And in the fatherhood of God and the brotherhood of Christ men went back (as they must ever do) to the idea of a family; only the natural family was no longer the ideal of society, but the universal family of mankind. It is, as I



take it, out of the conception of the universal family of mankind that has come all the best and noblest things of our western civilization, and it is this conception that is the impulse of all our efforts for the attainment of justice among men. It has taken a long while for the ideal to develop, indeed, it has not by any means developed fully even now, yet when we read history closely we can see that Christ's teaching is gradually becoming better understood. The ideal expands, and with the expansion of the ideal grow our beneficent laws and our softer and gentler ways of living. When we think of an universal family, it is not necessary to think of an universal empire, and it is here that Bluntschli made his greatest mistake. Bluntschli looked at man as an individual and mankind as a whole, and declared that they are "the original and permanent antithesis of creation."<sup>1</sup> We must not look at man as an individual, but at man as grouped in families. And so we need not look at an universal state, but at a family of states. The glory of the universe is diversity in unity. The idea of the universal state has departed with the idea of the universal church; neither the one nor the other will rise again on earth. The kingdoms of the world will become the kingdom of Christ, and the churches will become the church

<sup>1</sup> (The Theory of the State, Book I., Chap. ii., p. 26.)

of Christ, like as the Anglican and the American churches are one and yet not one—one as are the members of a family.

The question forces itself at once upon our minds, what is the bond of the family, and what is its controlling power? And the answer comes at once, love. It is futile to go back into an imaginary past and declare that love originated in the care of a mother for her offspring, and then passed over to the father. Man is only man as he manifests this divine quality in every member of the race; and yet we must observe that it was Christ who made man more of a man than he ever was before. It was love that became the great religious force of the new era of Christianity. In the practical workings of Christianity, this great thing was not confined to the family; nor did it remain a mere idea in society. As it burned in the hearts of all the followers of Christ it became a force that transformed all their ideas of, and all their actions in, life. And it was love that made them just; men cannot be unjust to those they love, and thus the ideal of justice in law became modified.

We must admit, when we read the history of the peoples of Europe in the times subsequent to Charlemagne until our own era, that the ideals of the brotherhood of man and of brotherly love fell greatly in abeyance; but this is precisely

why we call these ages the "dark ages"; and yet we find even in those times many evidences of love in the works of Christian brotherhoods of St. Francis and of other of the saints of the church, and in the high principles of chivalry. But it is certainly not until the old ideas of an universal Roman empire and of an universal Roman church had received their deathblows at the reformation of the church and the reorganization of society in the breaking up of feudalism, that the great conception of the universal family of man in the universal fatherhood of God grew strong and expanded. Feudalism had so many various causes, and presents so many variable aspects, it is impossible to describe it here. It grew undoubtedly, as we have seen, out of a movement in retrogression from the government and civilization of Charlemagne, and was founded primarily upon the fief, an estate held by an inferior of a superior, on condition of military or other service. The fief was a fragment of the Frankish empire. It arose, as all human institutions do, out of necessity, as the only means that could be devised of keeping the fierce, warlike, self-assertive society of the barbarous peoples in mediæval Europe together. We are concerned here with but one aspect of feudalism. Its hierarchical gradations of sovereigns, and vassals, and freemen, and villains, and serfs, stood in the way

of the natural expansion of the ideal of Christian brotherhood, and thus of the development of our western civilization. It was not until the abolition of feudal tenures in England by Parliament in 1660, and the breaking up of the same in France by the people in 1793, that men began to understand that rank and order are formal things, and that no rank and no order can neutralize the great fact of the brotherhood of man. At first the idea of brotherhood grew only within the different states, developing a force that put down factions and factious wars; but now it is growing among the nations themselves, making it ever more and more difficult for any state to oppress and harass another in the family of Christian nations.

But the idea of brotherly love has not stopped within the state with the putting down of internecine wars; it has gone on working ever more and more, softening the manners of all sorts of men, and ameliorating the conditions of life of those who in darker ages were compelled to bear all the burdens of society and government. And this divine force law has been compelled to recognize in every way. It is this that has changed the whole conception of criminal law and of punishment for its infraction. It is this that has placed many acts for the protection of "working" men and women and children on

the statute books; it is this that has secured for all classes a minimum of education; it is this that has made municipal corporations to care for the housing of the poor; it is this that is making common carriers, and other quasi-public corporations, recognize the fact that they exist primarily for the benefit of the people, and that they must conduct their businesses in justice with regard to all. Justice to-day in Great Britain and in the United States is commensurate with the ideal of brotherly love of these two peoples, and law is gradually becoming the expression of that love. And what is this but to say that all the law and all the teaching of men is summed up in the love of God and of man, even as Christ said: For he who loves God, the father of all, will understand justice, and he who loves his fellow-men, his brothers of the universal family named of Christ, will deal justly with them, and the rules of conduct which such men form will be based on love.

## LECTURE VI.

### THE PEOPLE.

WE have seen in a former lecture that one of the great distinctions between the modern and the ancient state is that, whereas in ancient times the state was all important, and the citizens existed primarily for its benefit, to-day the point of view, or of departure in state law and politics, has changed. It is now the citizen that is of chief importance and the state exists exclusively for his benefit. The principal object of the study of law and politics should therefore be the citizen, or as we may say, the masses of citizens, the people. Who, and what are the people? "Peoples and Nations," says Bluntschli, "are the products of history. A People comes into being by a slow psychological process, in which a mass of men gradually develop a type of life and society which differentiates them from others, and becomes the fixed inheritance of their race."

"A mere arbitrary combination or collection of men has never given rise to a People. Even the voluntary agreement and social contract of a number of persons cannot create one. To form

a People the experiences and fortunes of several generations must coöperate, and its permanence is never secured until a succession of families, handing down its accumulated culture from generation to generation, has made its characteristics hereditary.”<sup>1</sup> We see, then, that the two chief marks or notes of a people are race and family; a people must possess certain characteristics which make it different in race from other peoples, and these characteristics are preserved and transmitted from generation to generation in the family. It is scarcely necessary for me to define the term “nation.” We know that “nation” suggests to us a political idea rather than a social; and so we may say in a general way a nation is a people organized into a state.

We perceive, when we look back over the broad fields of history, that race has been the dominant factor in the birth and growth of the state from time immemorial, and that it has for the most part conditioned its progress and determined its bounds. It is not my purpose to study with you all the races, or even all the peoples of any race—we have not time to do so. We have incidentally studied one people of the Semitic and three of the Aryan race, both of which great families of men belong to the division of the white race, “the children of the sun and heaven,”

<sup>1</sup> (The Theory of the State, Book II., Chap. ii., p. 87.)

as the ancients called them. All the higher religions which unite man to God were first revealed among them; all the philosophy, the whole body of the law, and the perfection of art, issued from the workings of their mind. In contact with other races they have always ended in subduing them. They have dominated, and, indeed, they yet dominate the world. The function of the Semitic race is a religious one; on the other hand, the Aryan race has done most for the development of the state and the establishing and maintenance of the rights of men. Each of these two great races of the human family is divided into several minor races, and these minor races again into many peoples. The subdivisions of the Semitic race we will not regard, but only the subdivisions of the Aryan, and of these we will regard only three, the Latin, the Teuton and the Slav. The Anglo-American people, commonly called the Anglo-American race, because of its greatness, is a branch of the Teutonic race, and we will study it as such.

When we look over the field of Europe, the home of the chiefest part of the Aryan race, we find these three great subdivisions confronting each other and striving for the mastery. On the continents of America only two, the Latin and the Teutonic, are to be found.<sup>1</sup> The Slav has as

<sup>1</sup> (Since Russia sold Alaska to the United States.)



yet scarcely entered upon the battle for supremacy; he may, therefore, be briefly dismissed. What the future may have in store for this patient, plodding, religious race of men we do not know; but it is evident that the Slav will not strongly contend with the rest of the nations until the battle between the Latin and the Teutonic races shall have been brought to its final termination. We sometimes think that the "mills of God grind slowly," and yet, when we think so we ought to call to mind how vast have been the progress of events and the march of history. Why, it is but four hundred years since Pope Alexander VI. undertook to give the lands found and to be found west of a meridian one hundred leagues west of the Azores and the Cape Verde Islands to the kings of Castile, their heirs and successors forever; Pope Eugenius IV. having previously granted all the lands to the east to the kings of Portugal. It was only three hundred years ago that Philip II. of Spain, the greatest monarch of his age, sent his invincible Armada to conquer the realm of England. It is scarcely two hundred years ago when Louis XIV. of France obscured the other potentates of his day, and sought to absorb the light of the sun. It is not a hundred years since Napoleon Bonaparte trampled upon the persons and properties of all the kings who opposed his way, and tried to set

up an universal empire ; and yet, to-day, Portugal is nothing more than a commercial dependency of England ; Spain is shorn of her colonies and is bankrupt ; her remaining dependencies, having revolted against her misrule, have been taken from her forcibly. Italy, which has not sent out a colony since the days of the Cæsars until this age, has been obliged to surrender almost her only foreign possession. France is weighed down with debt and care ; the population of "*la grande nation*" declines slightly every year. Though feverishly putting forth her strength to colonize Algeria and Tongking and Madagascar and other parts of Africa ; she holds what she cannot use.

The Teutonic race, on the other hand, goes on to greatness every year. This race, it is evident, came to absolute preëminence when the new German empire was formed. During the time of the division of Germany into many sovereign states, subjects for French ambition and intrigues, there was a question whether the Latin or the Teutonic race would acquire "the sceptre," in spite of the rapid growth in numbers and power of the English speaking peoples. The question probably would have been decided in favor of the Teutonic race even if Germany had remained divided, because of the progress of Great Britain and her offspring, the United

States. But, however it might have been, it was the entrance of Germany as a united state into the family of nations which decided the question absolutely in favor of the Teutons. And yet Germany in many ways is Latinized. She holds a secondary place among the Teutonic peoples, although she possesses the home of the greatest of the Germanic tribes. It is the Anglo-Saxons, or, better, the Anglo-Americans, that are first in power and preëminence among the Teutons, and the whole family of the Aryans, a race which if it sprang chiefly from the Angles and Saxons, yet has in it a strain of the Northmen and something of the Celts, and of the other peoples of Europe, at least in its North American branch. But how is Germany Latinized? In her idea or plan of government. Germany possesses under her present ruling dynasty the Roman or military type of state, which tends ultimately to Cæsarism; that is, to the rule of an emperor founded upon the obedience of all the people. It is vain for the Kaiser to try to revive the institutions, with the glamour of the middle ages; his rule rests not upon the old *Stände* (Estates) of the Holy Roman empire; (feudalism was done away with by the revolution which the French inaugurated); it rests directly upon the backs of a toiling people. The Germanic empire is a state in which the Kaiser is the chief or war-lord, and between

him and the people there is nothing but a titular nobility. In Germany the people still live primarily for the state. The thought of the ancient world perpetuates itself where we would least have thought to find it, and thus Germany is a laggard in the family of the Teutonic nations; but Germany has always had a strange longing for the things across the Alps, always a fatal admiration for the things across the Rhine.

Among the Latin peoples we find, as may be expected, that the old idea of the great importance of the state has survived. It has been somewhat modified by the rise and growth of the democratic spirit, yet in monarchical Spain and Italy, as well as in republican France, the state is still first in the estimation of the people and they look to it for rule and guidance in every way of life; it is still the great patron and dispenser of awards and honors. This may be seen in many things, but especially in the education, or lack of education, of the Spanish and Italian and French boys; in the custom of the father making provision for the maintenance of each of his children; in the eagerness with which men desire to secure some place under the government; in the bureaucratic methods of administration; but chiefly in the lack of self-reliance that these peoples display.

“Ask a hundred young Frenchmen, graduating

from college," says Edmond Demolins, "for what careers they are destined, and three-quarters of them will reply that they are candidates for positions under the government." And as it is by examinations that positions are obtained, it results, "that to succeed at examination is the principal preoccupation of the young Frenchman, since all his future depends upon his first success."<sup>1</sup>

On the other hand, M. Demolins shows that the prime object of education in the new conditions of modern life should be to make children self-reliant and to create in them a power of initiation, and this object he states is accomplished by the English. "More advanced than we are in the way of modern transformations, they feel still more the obligation of responding to their great necessities. These are essentially to make young men ready *à se tirer aux-mêmes d'affaire* in all the difficulties and in all the situations of life; that is, to make practical and energetic men, and not functionaries and litterateurs, who know life only as they learn it in books, that is to say, but very little."<sup>2</sup>

And this ability and power to rely upon oneself de Tocqueville considers to be the most

<sup>1</sup> (*A quoi tient la supériorité des Anglo-Saxons*, Liv. I., Chap. i., p. 3.)

<sup>2</sup> (*Id.*, Chap. iii., p. 54.)

striking characteristic of Americans, who, as we know, have the same origin as the English, have lived for centuries under the same laws, are using the same language, and are constantly exchanging opinions and ideas, and who thus acquire the same methods and manners. After alluding to the fact that the Americans have no [political] school of philosophy and care very little for those into which Europe is divided, he says it is "nevertheless easy to perceive that almost all the inhabitants of the United States conduct their understanding in the same manner and govern it by the same rules," and these rules he declares to be: "to evade the bondage of system and habit, of family-maxims, class opinions, and, in some degree, of national prejudices; to accept tradition only as a means of information, and existing facts only as a lesson used in doing otherwise and doing better; to seek the reason of things for oneself, and in oneself alone; to tend to results without being bound to means, and to aim at the substance through the form;—such are the principal characteristics of what I shall call the philosophical method of the Americans."<sup>1</sup>

It is precisely by reason and by means of this self-reliance, or, as Demolins calls it, "self-help," that the foundations of the English colonies were laid so securely on the bleak shores of the North

<sup>1</sup> (Democracy in America, Part II., Book I., Chap. i., p. 1.)

Atlantic, and it was by reason and by means of this very thing that the colonies overcame the French in the long war for the possession of the North American continent; and this thing it was that made these young colonies a great and masterful people, able to stand alone in the family of nations; and this "self-help" of the colonies it was too that taught the mother country a lesson, both how to deal with her other children abroad and how to further their interests at home. It is self-reliance, "self-help," that makes the men of the Anglo-American race not to wait upon the state, but rather to act for themselves. And this gives them the effective power of initiation that has made them to seek for new routes and new possessions everywhere throughout the wide world. And this leads us to the conclusion that not all the people of the Aryan race can be said to possess the ideal of the state which we call modern, but only those of the Teutonic subdivision, and of this subdivision Germany, though she has the ideal of the modern state in her philosophy, yet has she the ideal rather than its substance. We will therefore study principally the Anglo-American peoples, and of them that which we know best, the American.

Let us ask ourselves, then, what is our attitude toward the state? Is it that of a subject? No; we never speak of ourselves as such. Is it that

of a client? No; we do not depend upon the state for life and liberty. Is it that of a master? No; we do not dominate our fellow-citizens by means of government. The attitude of Americans toward the state is that of a part owner, the part being infinitesimal because of the multitude of owners, but none the less real though it be small. And it is this ownership that makes us to delight in the state, that makes us to determine that nothing that is harmful shall come to it. And this makes us to understand also that the state exists for us, and not we for the state. As wonderful as we believe the constitution of the United States to be, yet we know and feel that it was and is a creation of man and was made by man for his good, because man cannot live in a stateless condition. It is because its work has been so beneficent that it is so much admired and revered; and yet, silently and unobtrusively, we have changed much of its spirit where we have not altered a letter. We well understand that the men who made the constitution, though they were democratic in many things, were yet in others aristocratic, and this is seen particularly in the status of the supreme court and in the machinery for the election of the president. And again we see this in the fact that Washington and Lee, Livingston and Hamilton, Otis and Hancock, and the chief actors in



the great drama for liberty generally were aristocrats, if not by birth, by education and feeling. It is to be remarked that Lafayette and Rochambeau were ever in sympathy with the officers of our revolution, and that they were not so with those who subsequently made the French. It was not until the presidency of Jefferson that democracy became a real factor in the government of the United States. And it was not until the presidency of Lincoln that it became the dominant one; and this can be said in spite of the equality of legal conditions which existed in the United States since the founding of its government. It was during the war of the rebellion that the people absolutely came to the front in the North, which place they have occupied since in the North, and, also, in the South, for the southern aristocracy was annihilated in the war. We have to-day—we have had since the time of Lincoln—a government by the people, of the people, and for the people, and the only one on the face of the earth. The state of Great Britain, as the House of Commons has gradually acquired more political power in the extension of the franchise and in the spread of education, is fast becoming a democracy, but as yet it possesses many aristocratic characteristics, and these are still dominant in that great empire.

It is in the United States alone that the people

are absolutely sovereign, and this they are in fact without any theory of *how*. It is simply admitted that the people possess all power and can do as it wills. Not that it can do no wrong, as was the rule in regard to kings, but that it can do as it wills. The difficulty of course is to ascertain the will of the people. How do we learn it? Ostensibly by sending men, representing the people, to this or that council, or assembly, or legislature, or senate. These men come together and after the discussion of the various questions that arise, determine them. This they seem to do, but in reality the questions of the day are determined outside of these bodies. They are determined partly by the voice of the people as expressed in the elections, but chiefly by that voice as it expresses itself day by day in the newspapers, in the magazines, and in the speeches and conversation of men who understand public affairs and perceive the trend of public sentiment; by, that is, the force of the new ruler in democratic governments, public opinion.

I speak of public opinion as a new ruler, and yet as Mr. Bryce has so admirably shown, all governments have rested upon the opinion, unspoken it may have been and unconscious, but none the less real and potent, of the masses of the people. "The despotisms of the East, although they usually began in conquest, did not

stand by military force but by popular assent. So did the feudal kingdoms of mediæval Europe. So do the despotisms of the Sultan (so far at least as regards his Mussulmen subjects), of the Shah, and of the Chinese Emperor at this moment.”<sup>1</sup>

We must understand that in the earlier and simpler forms of government opinion is always passive and never active—it acquiesces in the existing state of things because it knows no better, or, if it knows, perceives no way that betterment may be had. And very often, too, it is overlaid by superstition and false religious notions. “The difference, therefore, between the despotically governed and free countries does not consist in the fact that the latter are ruled by opinion and the former by force, for both are generally ruled by opinion. It consists rather in this, that in the former the people instinctively obey a power which they do not know to be really of their own creation, and to stand by their permission; whereas in the latter the people feel their supremacy, and consciously treat their rulers as their agents, while the rulers obey a power which they admit to have made and to be able to unmake them—the popular will.”<sup>2</sup>

<sup>1</sup> (The American Commonwealth, Part IV., Chap. lxxvii., p. 255.)

<sup>2</sup> (*Id.*, p. 257.)

But the question is, what is it that directs public opinion toward the right and keeps it true? All history confirms the words of the prophet Jeremiah that "the heart is deceitful above all things and is desperately sick."<sup>1</sup> It needs something to cure and to subdue it, and that something man has found in his religions. We shall not attempt to study how religions generally have affected the hearts of men—our study now is as to the effect of Christianity upon the white race, and more especially upon that part of it which is called the American people. The effect of the teachings of Christ upon the civilization of the west is the subject matter of Mr. Kidd's well-known treatise on "Social Evolution." He has shown, and to the most of his critics, has shown conclusively, that the central feature of human history is not the philosophy, but the religion of man, and that human progress does not consist in the development of the intellect, but rather in the growth of moral, that is, of religious feeling. Before the coming of Christ, religion, as we know, was generally divorced from morality; and it is because Christ brought religion and morality together and made them one and the same thing, that His teaching has become the light of the world.

It is precisely in the United States that the re-

<sup>1</sup> (xvii. 9, R. V.)

ligion of Christ is freest to do its beneficent work for the hearts of men. Here there is no established church and no sect of the church that is in any way favored and assisted by the different governments of the states, or by that of the United States; and yet there is no people within the circle of the influence of western Christendom that is more devoted to the teachings of Christ than is the American people, none that is more truly religious. The religious side of the life of the American people was clearly perceived and remarked upon by our first great critic, de Tocqueville,<sup>1</sup> and although Mr. Bryce, our last critic, does not express himself in as strong terms as does de Tocqueville, he yet avers that the ethical standard of the average man in the United States is the Christian standard. "The average man has not thought of any other standard, and religious teaching, although it has become less definite and less dogmatic" than that of Protestant Europe, "is still to him the source whence he believes himself to have drawn his ideas of duty and conduct."<sup>2</sup>

Even a superficial knowledge of the people of the United States must convince a man of the truth of Mr. Bryce's assertion. The American people have long since passed outside the bands

<sup>1</sup> (Democracy in America, Part II., Book I., Chap. i., p. 4.)

<sup>2</sup> (The American Commonwealth, Part VI., Chap. cvii., p. 723.)

of mediæval theology and they no longer care for dogmatic teaching, but they believe, and they believe most thoroughly, in the fatherhood of God that made them, and in the sonship of Christ, the universal brother of the whole brotherhood of man. And it is practically these two beliefs that direct public opinion toward the right and keep it true.

But public opinion is but a breath, at most a thought or an idea. Does it not rest upon something? Yes, upon common sense, or, as we may say, upon the sound practical judgment of the people. That it be sound, means that it be unwarped by prejudice, passion, fancy or fear; that it be practical means that it be unaided by any art or systematic train of argumentation but be the result of experience alone. "Native sense must have been invigorated or practiced by practical life to become common sense."<sup>1</sup> It is common sense that differentiates the Anglo-American peoples from the other peoples of Christendom, and this thing is the product of their self-help and self-reliance, working upon their free minds in a belief in God and in the brotherhood of man. Never before in the history of the world has there been manifested in a people so much of a common feeling as there has been in the United States during the past thirty or forty

<sup>1</sup> (Lieber, *Pol. Ethics*, Book I., Sec. xlv., p. 93.)

years, and this has been the result of the common sense of the people. Free from prejudice and class feeling, they have learned that mankind is one, and that all men have for the most part the same motives and the same ideas. The difference between class and class has broken down and disappeared; there are some rich and many poor, but the rich man does not feel himself to be made of different clay from his poor brother. He knows that there is a solidarity that cannot be destroyed, that for weal or woe he and his neighbor are bound together in indissoluble ties in society, as well as in politics. One reason—a practical one—why the rich man does not consider himself to be made of different clay from his poor neighbor is because he sees that the poor man of to-day may be the rich man of to-morrow; but the fundamental reason lies in the expansion of the teachings of Christ to the realities of life. "It would be difficult, perhaps impossible, to exaggerate the difference in the estimate put upon the value of a human life in our own day and in the times that are now in the custody of written history. If it be true that the 'individual withers and the race is more and more' it may turn out that the value set upon the race is solely to emphasize the value of the individual."<sup>1</sup>

<sup>1</sup> (Donald, *The Expansion of Religion*, p. 49.)

The purpose of the state and government to-day is recognized by all to be for the protection and welfare of all men, be the individual man high or low, rich or poor; and this great thing has been brought about by the teachings of Christ as the same have been expanded and carried into the practical life of the people. There was a time, not many years ago, when the question that Jesus Christ asked, "How much then is a man of more value than a sheep?" would have been put by the privileged few, "How much then is a deer of more value than a man?" But such ideas were never part of the mental furniture of the men who have dwelt within the confines of the American republic. The welfare of all free men has ever been the end of the American state and government, and the value of a man's life has never been measured by the abundance of the things he possessed. In his recent book, "Democracy and Liberty," Mr. Lecky bemoans the rise of the democratic spirit in the world, and especially in England, in a way that seems curious to us here in the United States who have learned to look upon man as of primary, and property as of secondary importance in life. It is manhood suffrage, the right of every freeman to vote in all elections, that distresses him. It was "the indissoluble connection between taxation and representation which was,"



he says, "the very mainspring of English conceptions of freedom." "It was also a fundamental principle of the old system of representation that the chief political power should be with the owners of the land,"<sup>1</sup> but democracy, he avers, "pushed to its full consequences, places the whole property of the country in the hands of the poorest classes, giving them unlimited power of helping themselves."<sup>2</sup> And yet how humane has democracy been when we compare the moderation of the many poor toward the few rich since manhood suffrage has prevailed, to the inhumanity of the few rich toward the many poor when political power was in the hands of the few ! It is not necessary more than to allude to the condition of the rural laborers and factory hands and miners, before the rise of the people, in England. Think of it. It was in the year 1834 that Harriet Martineau could write of the condition of the children of the rural laborers in England that they "struggled with the pigs for food during the day,—doing nothing useful, learning nothing which would raise them above the beasts of the field ; and at night huddled on damp straw, under a roof of rotten thatch ; or went out to carry poached game, or to fire the farmers' stacks."<sup>3</sup> And of the factory children

<sup>1</sup> (Vol. I., Chap. i., p. 2.)

<sup>2</sup> (*Id.*, p. 33.)

<sup>3</sup> (History of England, Vol. III., Book IV., Chap. vii., p. 334.)

she speaks : " Here were children—little creatures whose lives should have been spent in growing in body and mind,—employed all day, and far into the night, in the monotonous and stupefying work of spinning in the mills." <sup>1</sup> But the state of the women and children who worked in the mines was most forlorn. " In 1842," says Miss Martineau, " Lord Ashley had brought forward a bill on behalf of a set of people who really appeared to have been neglected by all mankind"—the miners. " A committee of inquiry, obtained by this philanthropist, laid open a scene which shocked the whole community. Women were employed as beasts of burden; children were stunted and diseased, beaten, overworked, oppressed in every way; both women and children were made to crawl on all fours in the passages of the pits, dragging carts by a chain passing from the waist between the legs; and all lived in an atmosphere of filth and profligacy which could hardly leave a thought or feeling untainted by vice." <sup>2</sup> Nor were the English mill and mine owners the only sinners against women and children, as the address of Seth Luther, on " The Condition of the Producing Classes in Europe and America in 1832 " will show. Certainly it is not property that has been the cause of the miseries of mankind, for democracy desires

<sup>1</sup> (*Id.*)<sup>2</sup> (*Id.*, Vol. IV., Book VI., Chap. vii., p. 355.)

wealth as strenuously as aristocracy ; but there is no gainsaying it, the making of property the thing of chief importance, and the welfare of men a matter of little concern, has been the cause of untold miseries, whether we look at ancient, at mediæval, or at modern society.

That democracy has many faults and many evil tendencies all who have any experience know, and those who have none can read Mr. Lecky's book, for in that he singles out and makes prominent everything that can be said against the rule of the people. But Mr. Lecky, it must be observed, writes with a prejudice, "he is a gentleman in the old sense of the term, who feels that his weight as such is in some sort menaced."<sup>1</sup> But one thing, among many, that Mr. Lecky and writers of his school deplore I am not convinced is altogether an evil, and that is the decline of parliamentary government. Parliamentary, or as we may say, representative government, has done great service in developing the interests and protecting the liberties of mankind, but it is not too much to say that it has had its day and that its usefulness is passing away. If it were not so, the parliament of Great Britain, the congress of the United States and the legislatures of the various states of the union would not exhibit so many signs of weakness

<sup>1</sup> (Godkin, Problems of Modern Democracy, p. 279.)

and degeneration. The people, the masses of the people, it is evident, are far better educated and infinitely better behaved than they were one hundred or even fifty years ago. There will never come a time, so far as we can see, when some central legislating power or powers will not be required, but the tendency to-day is for the people to take ever more and more care of themselves. We see this in the so-called local option laws, which now have existence in Great Britain and her colonies, as well as in the United States, in the *referendum* of the Swiss republic, and in the submission of constitutions and of various proposals and amendments to the people of the respective American states. Mr. Bryce has a chapter on direct legislation by the people in his well-known book, on "The American Commonwealth,"<sup>1</sup> which is very suggestive. It is evident that he is not in sympathy with the thing he describes; but this lack of sympathy is to be expected from so accomplished a parliamentarian.

But the people of the United States show that they are aware of their sovereignty, not only in the way of making laws directly for their own governance, but by carrying on their affairs without enactments or with only the indirect aid of them. If, as Mr. Lecky says, the "characteristic

<sup>1</sup> (Part II., Chap. xxxix., p. 463.)

function of government is business,"<sup>1</sup> it is in the management of so much business with so little aid of government that democracy shows its right to rule. It is amazing how much of the business of the people of the American republic is carried on without political guidance. Government has created from time immemorial the fictitious person, a corporation, but it is only within the past fifty years that this creation has been augmented and developed for the conduct of every kind of business. By means of corporations vast interests which would otherwise have demanded the intervention of the government have been cared for in ways that no governmental regulations could foresee, and for which they could therefore have made no provision. These aids of progress have increased everywhere throughout Christendom, but it is chiefly in the United States that they have become so numerous. Nor are these corporations simply confined to the transaction of business; thousands of them are for charitable and social and fraternal purposes, and these are interwoven with the life of the people, and carry out their wishes and provide for their welfare and happiness in innumerable different ways. That there are many abuses that grow out of the great growth of corporations we all know, but we may look to see the

<sup>1</sup> (Democracy and Liberty, Vol. I., Chap. i., p. 45.)

people rectifying them in due time. But we must not forget that it is the corporations which have enabled the people of the United States to subdue this continent, and to cover it with the good things that go to make up the comfort and pleasures of life, which embody as it were, our western civilization. Again, I would observe that so accustomed are the people of the United States to consult and agree together to carry on their affairs, that not even corporations are always requisite, in spite of their manifest advantages of unity and limited liability. We see this in the establishment of clearing-houses, chambers of commerce, and the like, though these eventually secure some kind of corporate existence.

But is business the characteristic function of government? Are there not interests that are higher? In the outbreak of our war with Spain the people of the United States said that there were, and these they pronounced to be the ends of justice and humanity. And these they have since declared to be the rightful ends of the government of the American people, in the pulpit, in the press, on the platform, yes, in Congress itself; though the covetousness of the political business men has striven to make the people believe that gain, or, as Mr. Lecky calls it, "business," is the characteristic function of the democracy of the new, as well as of the aristocracies of

the old world. It is because Christian democracy has always had regard for the high interests of life that we love and trust it. The whole doctrine of the fatherhood of God and the brotherhood of man is involved in the Lord's Prayer, but until the rise and growth of democracy they were never understood nor acted upon. It is too much to say that they are fully comprehended and put into practice to-day, but the people, the great masses of the people, not only of our own country but of all countries throughout the civilized world, are beginning to feel their force and to follow their meaning. It is not only the soldiers and the sailors of Great Britain and the United States who believe that they are children of one Father, but those of the kingdom of Spain and of the republic of France—those of every nation under the sun.

I can see only two questions that confront the people of the United States that carry with them no suggestions of immediate solution, and they are the question of the alliance of politics with business and the question of the too great amassing of wealth in the hands of a few individual citizens. The first question is the one that faces us in the present, the second the one which will face us in the future. A time was in the history of the United States when men entered the arena of politics as the supporters and expound-

ers of some great social or economic principle, which was as a rule alleged to be found, or not to be found, in the constitution of the United States; but all the great constitutional questions have been settled, and the chief thought of the people for the past generation has been how they could best develop the resources of the country. It was undoubtedly first because of this impulse that men sought for political places, or resorted to others who had political places, for business purposes. And if the businesses in view had been always legitimate and had been carried on in legitimate ways, we would have no cause for complaint and fear. But many of the businesses that men have sought to promote politically have not been legitimate, and much of the legitimate businesses so promoted have been advanced by dishonorable and dishonest means.

But this is not the worst side of the nefarious alliance between business and politics. The worst has been the fact that as outside politicians have seen how business men have endeavored to further their personal interests politically, they have sought and obtained the positions by and from which favors can be had by paying for them. Nor is this all. After these men had attained positions of political power, they learned not only to make the dishonest promoters of businesses, legitimate and illegitimate,



pay for the favors they required, but also to levy tax upon and to take toll from many legitimate businesses conducted by honorable business men. And so, as these political positions have become very valuable from a money making point of view, it has come to pass that the politicians have not hesitated to perpetrate frauds of all kinds in order to elect themselves and their creatures to the places of pelf and power. It is the question of the hour. In the great cities of the land and in some of the smaller ones, too, the whole municipal machinery is in the hands of so-called "bosses" who batten off the business enterprises of our citizens. The honest as well as the dishonest business men are compelled to subsidize and feed these harpies: the honest that they may not be suppressed, the dishonest that they may be maintained.

How long this state of affairs will continue, we cannot tell. Yet I believe an end will eventually be made to it, and for this reason. Party rancor has greatly declined in the United States, and there is but little place for political prejudice. It is by rancor and prejudice chiefly that the political parties have been held together in the past, by means of which fact the "bosses" have been able to obtain their evil ascendancy. As party lines become more and more obliterated they will become so first in municipal elections ;

indeed, there is evidence that they are less strongly drawn here from year to year. When they shall become wholly effaced and there shall be no more municipal politics, the *régime* of the "bosses" must go; for there are more honest than dishonest men in our country, and the honest will at last combine and put to rout their shameless adversaries.

There is a political measure, also, which if it could be carried into effect would, it seems to me, help to divorce business from politics, and that is, the election of United States senators directly by the people. The senate of the United States is made up now greatly of business men, and when we ask ourselves why this is so, we must answer that when political business men have obtained the control of their respective state legislatures for their individual purposes, they have sought the office of senator as a way to social rehabilitation and preëminence; and perhaps also as a means of further benefiting their respective business enterprises. Or, if this has not been exactly the history of the election of business men to the senate, we must say that they have been chosen because they are rich men, and have been able to contribute, and have contributed, to the "campaign funds" of the different state legislators and senators, and then claimed that these last should return favor for

favor and promote them to the high dignity of the American senate, a place designed for patriots and statesmen, that is, for men of the noblest character and of the highest aspirations for truth and righteousness in the life of the nation. No one would complain—rather would every one rejoice—if the business men of our country should be elected to the senate of the United States because of their endeavors to promote the welfare of their respective communities, and this should be the test of their fitness. At the polls the people would be the best judges of their honest efforts so to do.

The question of the too great amassing of wealth in the hands of a few individual citizens is more difficult of solution. That there will be inequalities in the distribution of wealth all men will agree who perceive that there are inequalities in the mental and physical endowments of mankind; and this perception is well-nigh universal; but there need not be, there ought not to be, the extremes of inequality between the multimillionaires and the proletarians which now amaze and perplex us and cause us to fear.<sup>1</sup> It is not at all likely that socialism in any of its forms will prevail in the great republic except it may be in the form of state socialism, that is, the tak-

<sup>1</sup> (*Vide* Spahr, *The Present Distribution of Wealth in the United States*, p. 158, *et seq.*)

ing over to itself by the state of certain properties and interests that have become monopolies or that tend to become such, for the benefit of all ; such as railroads, and telegraphs, and other means of transportation and of communication, and the articles of trade that have come, or will come eventually, into the control of some central combination or trust ; yet, I hope that state socialism will never develop in the United States, because, in my opinion, state socialism, and indeed all forms of socialism, mean the decline of democracy. Democracy postulates that government from above shall be reduced to a minimum. State socialism means the increase of the office-holding class to a very great extent, and the giving into their hands of powers that cannot be described as anything other than imperial and aristocratic.

What are the remedies for the too great inequalities of fortune, which every man who reflects perceives to be wrong and deleterious to the best interests of the country ? There are no legal remedies, if we are to remain a free people, except those which come from a just and equitable system of taxation, and from enactments which compel men to be honest and which prevent certain causes of injustice ; for example, the watering of stocks, and the giving of special rates of transportation to favored individuals.

The real remedy lies outside of the domain of law, and finds its root in morality, or better, in religion. It is connected with the simple thing that has made the rule of the people possible, education; but by education I do not mean so much the thing that has gone by its name up to the present time, the training of the mental powers and faculties merely. I mean also the teaching of men the principles and ideas that follow necessarily from the conviction that there is a God in heaven who is Father of us all, whose great attributes are justice and mercy, and truth and love, and who can be trusted to be all these things toward His children, both here and hereafter, as they are so toward their fellow-men. In other words, it is only as men have a religious sanction for their conduct that they will cease to be selfish and learn to be liberal. It is not with wealth that is acquired by honest toil and fair dealing that the people quarrel, but with that which is gained by meanness and fraud.

There is another thing, which, as it seems to me, the people in a democracy must learn, and that is that not the individual but the family is the basis and unit of society, and that the church and the state must exhibit in every way the family ideal. That men live in an universal family in the sight of God is shown by the fact that Christ taught us to address God as "our

Father." This truth, of course, carried to its logical conclusion, must necessarily mean an universal state, which would be conterminous with a catholic church, but we cannot carry it to its logical conclusion in the world to-day, it is self-evident; but we can carry it to its logical conclusion in a nation. And this is the true value of the national state and its essential significance, that the men of a nation feel themselves to be brothers. The fact of brotherhood has outgrown all caste and class, and has expanded to the extent of nationality at least. In God's good time it will grow wider and wider, until it embraces the world. In the recent *rapprochement* between the peoples of Great Britain and of the United States it has taken a great step in advance. Now the family is a commonwealth even as is the nation; the family in the United States is not the commonwealth it once was, but this unity we must restore, and this we can do in part by restricting divorces and by making man and wife more truly partners in their present worldly possessions. It is a matter of observation in history that the separation of the pecuniary interests of man and wife runs with looseness in divorce. No one would care to have the inequalities of "*baron et feme*" restored, but all right-minded citizens ought to endeavor to make possible a greater community of possessions. History shows that

the family is the basis of society, and historical research has proven that not individual ownership, but joint ownership, was the original way in which property was held and possessed. There ought to be a joint ownership of family possessions by man and wife, and thus the idea of joint ownership would soon pass to the people at large. Not that the joint ownership of all the wealth of a people by all the families is possible or desirable, otherwise could no family have its own proper possessions, but the ideas that flow from joint ownership ought to and would, if the possessions of a family were held jointly, pass to the body politic, so that no man would ever say, I can do what I will with my own. And this I believe would be the solution of the great question of social inequality. Then the wealth, or capital, that ought to be put into any enterprise, whatsoever it might be, would not be regarded by the contributor as his own absolutely, but he would feel that all who embarked in the enterprise with him had some rights in and to the same. What those rights would be exactly no man could say; no one can say precisely what the rights of brothers are as against one another in a human family. And so the great ideal of the family in the nation would be strengthened by the brotherly treatment of the poor by the rich, and the poor would never look upon them-

selves as outside of the life of society and outside the life of the church.

Each community, too, would become stronger as the parts of it became more friendly; more works for general improvement would be undertaken; more individual gifts would be made for the benefit of all. It is a thing much to be deplored in our modern cities that there is no agora, no forum, no piazza, no cathedral, for the common meeting of the citizens of a community; nor are there any games or pageants which are undertaken by the public for the account and pleasure of all. We have parades of various fraternities, and occasionally a band plays in some park or public square, but this is all that is done to bring the people together. There ought to be in every city a general place of meeting, a great square or hall, and there ought to be a central place of worship, a vast cathedral, and these ought to be adorned and beautified by sculpture and painting. And this leads to the conviction that there must be more time set apart for the recreation of the people, and that the Saturday half-holiday must be made a permanent institution. Machinery has so multiplied the processes of production that it is no longer necessary that men and women should labor twelve nor yet ten hours a day, nor indeed every day of the six of labor. It has been estimated by statisticians that two or three hours



a day of hard work performed by all the able-bodied are sufficient for the support of all; but admitting that this conclusion has in it a certain amount of exaggeration, we know that it is not necessary or well for the working classes to labor as many hours a day as they used to do, and that eight hours is becoming the maximum day of labor throughout the civilized world. We who are our brothers' keepers ought to see to it then, that when the hours of labor are over and the people have a holiday, or a half-holiday, they have some ways of obtaining that recreation that all men agree is necessary to keep a sound mind in a sound body. Mr. Lecky<sup>1</sup> summing up all the hard things that have been said by various writers against the intellectual and esthetic side of American civilization, avers that, although de Tocqueville, Carlyle and Renan used exaggerated language when condemning the United States in this regard, "modern democracy is not favorable to the higher forms of intellectual life." And to this conclusion we must also come when we consider the immense extent of territory and the diversity of the people of the United States, and compare them with the small number "of great works of beauty or of thought, of long meditation, of sober taste, or serious, uninterrupted study,"<sup>2</sup> that have been produced. The strength

<sup>1</sup> (Democracy and Liberty, Vol. I., Chap. i., p. 131.)    <sup>2</sup> (*Id.*)

and virility of the nation have gone into the material development of the country and the many mechanical devices and inventions made necessary by the same. But that the American people do possess imagination and that of the highest kind, is shown by their wonderful railways and bridges, as well as by the verses of some of the purest minds the world has ever known. What we want is the creation of a greater demand for the products of the imagination in the arts as well as in the sciences, and this can be effected only as the people gain more leisure, and are better and more fully educated, and feel a oneness with those who possess these divine gifts. It was not only the few wealthy dilettanti and collectors who appreciated the work of a Phidias or a Michael Angelo, but the whole mass of the people of Athens and Florence. The greatest creations, too, of Zeuxis and Raphael were painted to be seen by all. Surely it is because we are so deficient in the productions of the noble arts of man that life in so much of the territory of the United States is colorless and dreary, and so many emigrate annually to the lands of the old world. Ruskin's reason, as alleged, for having had no desire to visit America, because it had no feudal castles, fallen into picturesque decay and covered with soft green moss, is absurd; but surely we ought not to be content with the prod-

ucts of commerce alone. The basis of the state of Venice was its trade, and yet that city became one of the greatest marts of the world in the things of beauty.

And so we see it is that "man shall not live by bread alone, but by every word that proceedeth out of the mouth of God," and out of God's mouth has proceeded not only the things that are useful but the things that are beautiful, that make life worth the living. The lily is not a useful plant, but how highly did our Lord commend it. So also must the works of men's hands be commended that have in them this great quality of beauty. But here we must pause ; the things that are truly beautiful, when wrought by men's hands, are those that are so in God's sight, and in God's sight only those things can be pleasing that have in them moral ends and ideals. And such is the beauty of the new Jerusalem, the Holy City, as described by Saint John in the Book of his Revelation.

And this brings us to the thought of the kingdom of God. When John Baptist began to preach and to foretell the coming of Christ, he announced that the kingdom of God was at hand, and when Christ first preached to men this was also the burden of His message. What did the prophet and what did the Messiah mean ? Nothing else, as it seems to me, than this, that the time had

come when the people should recognize that God is the great ruler in the affairs of men, and that all things must be referred to Him, and that only such as are good in His sight should remain. Not that the state and government should be overthrown. Christ's attitude toward them was never inimical, but they were to change as the social order changed, and the social order was to change as men became more like unto God: because in the kingdom men become the sons of God, as He becomes their Father. The rule of God, then, in His kingdom, was not to be that of a king but of a Father, and men were to regard themselves as brothers. It is in democracy, I believe, and in democracy alone, that the kingdom of God can be realized, for democracy alone of all the governments in the world has acknowledged brotherhood to be the underlying basis of the society which God founded in man when He endowed him with social attributes and feelings; it alone expresses the fact of a universal brotherhood in relation to a universal Father. It does not matter so much what may be the outward form of the state, the government must be one of brothers, by brothers, for brothers, for all are the children of one Father.

And men cannot get rid of the fact of brotherhood. It has become ever more and more the dominant factor of their lives. Neither liberty

nor equality are exactly possible, for one man's liberty may impinge upon another's, and to one is given five talents and to another one, but brotherhood is possible because it is one of the basal facts of life, and out of it will come all the liberty and all the equality that is possible and wise for the good of mankind and for the government of the world. Yet men may not act toward one another as brothers; yes, herein lies the fault of democracy, indeed, of all forms of government. Men may, like Cain, deny that they are their brothers' keepers. This is the element of transgression that is always to be taken into account, and the transgression of the law of God is alienation from Him, is what is called sin; it leads to expulsion from His Kingdom.

And it is just herein that Christ comes as the great support and aid of the state and government. He displaces sin in men's hearts and puts in its place and stead the principles of righteousness, and He does this in two ways, by precept and by example. If men would follow the doctrines of the Sermon on the Mount they would never do what is wrong; if they would follow the steps of the son of Man they would ever do what is right, and there would be little use for government and but little use for the state. But men do not carry out the precepts of the Sermon

on the Mount, they fail to follow the steps of the son of Man: true, but they try to carry out the precepts, they follow in some way the steps. And herein it is that the church becomes the second bulwark (I had almost said first) of society, and takes its place alongside of the state. It is the church that teaches men the Sermon on the Mount and the other great sayings of Jesus Christ, it is the church that holds up before the eyes of men the stirring example of His perfect life. Without the church the state would break up into fragments, for the state is built upon only one-half of the nature of man. The church is built upon the other half and both are necessary for his welfare and security. Destroy one and the other falls to the ground. Without religion man becomes a brute; without order he cannot live as man. The church stands for religion, the state for order, and these two express all that is best in the life of the people, and just in proportion as the life of the people is high and noble, so are they.

But more, as I believe, the church stands for democracy and is the great upholder of it. The ministry is taken from the people, the Word is preached to them, by the sacrament of Baptism all are welcomed into its fold upon an equal footing, in the sacrament of the Lord's Supper all are recognized and treated as brothers. The

sacraments of Christ are the bases of Christian brotherhood, they are its symbol and sign, as well as the symbol and sign of the Incarnation of the Son of God.









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